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Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774
Telephone (301) 883-6170

IN THE MATTER OF:

Jeff Schmidt
Complainant

Vs.

RE: HRC Case No.: RF00-1135
EEOC Case No.: 12HA10020

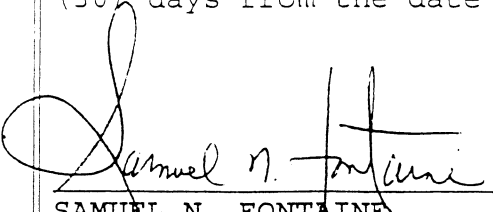
American Institute of Physics
Respondent

COMMISSION ORDER

The Human Relations Commission having been petitioned to review the actions of the Executive Director in the administrative dismissal of the above-referenced complaint, received the recommendations of the Employment Panel, which reviewed the file in this matter.

The Commission at its regularly scheduled meeting on Monday, July 22, 2002, voted to adopt the recommendations of the Employment Panel and Executive Director in re-opening said complaint.

Under Section 2-197(c) of Division 12, Prince George's Code, 1991 edition, as amended, any party aggrieved by a final decision of the COMMISSSION in a contested case is entitled to file and appeal pursuant to Subtitle B of the Maryland Rules of Procedure, Annotated Code of Maryland, within thirty (30) days from the date last entered above.



SAMUEL N. FONTAINE
Chairperson
Prince George's County
Human Relations Commission

S 001404

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ms. Thersa Braun
Human Resource
American Institute Of Physics
One Physics Ellipse
College Park, MD 20740

PERSON FILING CHARGE

Schmidt, Jeff

THIS PERSON (check one)

- ☒ CLAIMS TO BE AGGRIEVED
☐ IS FILING ON BEHALF OF ANOTHER

DATE OF ALLEGED VIOLATION

Earliest

Most Recent

01/28/1998

05/31/2000

PLACE OF ALLEGED VIOLATION

College Park, MD

EEOC CHARGE NUMBER

12HA10020

FEPA CHARGE NUMBER

RF00-1135

NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTIONS WHERE A FEP AGENCY WILL INITIALLY PROCESS
(See attached information sheet for additional information)

YOU ARE HEREBY NOTIFIED THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

- ☒ Title VII of the Civil Rights Act of 1964
☐ The Age Discrimination in Employment Act of 1967 (ADEA)
☐ The Americans with Disabilities Act

HAS BEEN RECEIVED BY

- ☐ The EEOC and sent for initial processing to _____
(FEP Agency)
☒ The Prince George's County, H.R.C. and sent to the EEOC for dual filing purposes.
(FEP Agency)

While EEOC has jurisdiction (upon the expiration of any deferral requirement if this is a Title VII or ADA charge) to investigate this charge, EEOC may refrain from beginning an investigation and await the issuance of the Agency's final findings and orders. These final findings and orders will be given weight by EEOC in making its own determination as to whether or not reasonable cause exists to believe that the allegations made in the charge are true.

You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency in the course of its proceedings will be considered by the Commission when it reviews the Agency's final findings and orders. In many instances the Commission will take no further action, thereby avoiding the necessity of an investigation by both the Agency and the Commission. This likelihood is increased by your active cooperation with the Agency.

- ☒ As a party to the charge, you may request that EEOC review the final decision and order of the above named Agency. For such a request to be honored, you must notify the Commission in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by the Commission. Regardless of whether the Agency or the Commission processes the charge, the Recordkeeping and Non-Retaliation provisions of Title VII and the ADEA as explained in the "EEOC Rules and Regulations" apply.

For further correspondence on this matter, please use the charge number(s) shown.

- ☐ An Equal Pay Act investigation (29 U.S.C. 206(d)) will be conducted by the Commission concurrently with the Agency's investigation of the charge.
☒ Enclosure: Copy of Charge

BASIS OF DISCRIMINATION

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NAT. ORIGIN ☐ AGE ☐ DISABILITY ☒ RETALIATION ☐ OTHER

CIRCUMSTANCES OF ALLEGED VIOLATION

See enclosed Form 5, Charge of Discrimination.

S 001405

DATE

11/22/2000

TYPED NAME/TITLE OF AUTHORIZED EEOC OFFICIAL

James L. Lee, Director
Director

SIGNATURE

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

☒ FEPA
☐ EEOCRF00-1135
12HA10020

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

Prince George's County, H.R.C. and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

HOME TELEPHONE (Include Area Code)

Mr. Jeff Schmidt

(202) 537-3645

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

3003 Van Ness Street, N.W., Washington, DC 20008

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

American Institute Of Physics

Cat D (501 +)

(301) 209-3100

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

One Physics Ellipse, College Park, MD 20740

033

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)01/28/1998 05/31/2000
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I believe that the Respondent has retaliated against me when I was involuntarily discharged on May 31, 2000.

On August 17, 1999, I complained to my Supervisors that the Respondent was not hiring employees (Black) in professional positions. I also complained that the Respondent was not promoting and following their Affirmative Action Program to hire Black employees in professional positions.

On August 17, 1999, I was given a negative Performance Review, after I complained.

In addition, on May 31, 2000, I was discharged for writing a book on company time, which is not true.

I believe that I was treated in this manner in retaliation for my complaints of disparate treatment of employees (Black) not being hired in professional positions.

Furthermore, from January 28, 1998 to May 31, 2000, the Respondent banned any private conversations between myself and Co-Workers (White) because they thought that I was organizing to bring about changes in their policies, including their discriminatory hiring policies.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Month, day and year)

Date 21 Nov. 2000

Charging Party (Signature)

EEOC FORM 5 (Rev. 07/99)

CHARGING PARTY COPY

S 001406

21 November 2000-

Prince Georges County Human Relations Commission
1400 McCormick Drive, Suite 245
Largo, MD 20774

Dear Investigator:

Thank you for speaking with me today and taking my complaint against *Physics Today* magazine, my former employer. As I will explain, *Physics Today* fired me in retaliation for opposing its all-white hiring practices, unequal pay practices and other practices in need of reform.

I was a workplace activist at *Physics Today*, which is published by the American Institute of Physics, in College Park, Maryland. While doing my assignments conscientiously and always beating my deadlines, I worked with other staff members to improve the organization. Equal employment opportunity and staff diversity was the reform that we pushed for the hardest. I pursued that all the way up to the CEO of the American Institute of Physics, who was angry at me for making an issue of it. As of 1 November 2000, *Physics Today* had an all-white professional staff (and an all-black secretarial staff). I am not talking about a staff of four or five editors, who might all be white by coincidence. I'm talking about an all-white staff of 16 professionals. In spite of *Physics Today*'s claim that it is an affirmative action employer, its editors look nothing like the physics community, the journalism community, the greater Washington, D.C., community where the magazine is based, or the nation as a whole. Since *Physics Today* moved from New York to Maryland seven years ago, it has hired many people with no journalism experience and trained them, but it has done this exclusively for white males, an unequal practice that I openly opposed.

I think it was wrong for *Physics Today* to maintain an all-white professional staff. But even if that were somehow right, I think it was still wrong for the company to fire me in part for opposing that practice. I am writing to ask that in the interest of justice you punish the American Institute of Physics heavily for that repressive action. Also, I want reinstatement, back pay and so on.

The company receives some federal funding and therefore has had to report to the federal government on its employment practices. The company reports deficiencies and promises to correct them, but its efforts are mainly for show. For example, at the time of a 1995 report showing underemployment of minority professionals at the American Institute of Physics, *Physics Today* magazine had only one minority professional. Five years later — after five years of supposed implementation of AIP's "affirmative action plan" — the magazine had no minority professionals. The magazine clearly needed help, but it punished me for bringing its deficiency to people's attention and calling for real remedial action.

The company fired me on the pretext of misconduct: They accused me of writing a book on company time. The State of Maryland Department of Labor, Office of Unemployment Insurance, conducted a detailed investigation into the circumstances under which *Physics Today* fired me, and found no evidence of even simple misconduct on my part, leaving my workplace activism as the more obvious explanation for my firing. The state awarded me full unemployment benefits. The company, lacking any real evidence to back its claim, did not appeal. Inconveniently, for 19 years they had given me raises and promotions based explicitly on close scrutiny of the quantity and quality of my work (they invariably said that I met or exceeded the job requirements), and at the time they fired me, I was two months ahead in my work, having just fulfilled my entire annual review-period work quota in the first 10 months of the period, and I had a thick file of praise for my work — from both management and outsiders.

S 001407

I did write a book — *Disciplined Minds* (Rowman & Littlefield, 2000) — but on my own time. I am sure the company didn't like the book, in part because it presents a new argument in favor of affirmative action. The company's phony charge of misconduct was based on its opportunistic interpretation of dramatic writing in the book itself (a nod to Abbie Hoffman's 1971 classic, *Steal This Book*). Instead of simply ignoring the book, management chose to make the most extreme interpretation possible of writing in it set years ago in another city. It is very telling that despite my 19 years of service to *Physics Today*, my supervisors did not ask me even a single question about the book, or about anything else, before dismissing me. They were looking for an opportunity to get rid of me.

The company apparently thought the book looked so radical that no one would defend me. But that hasn't been the case. In addition to the Maryland Department of Labor finding, there have been many protests, including protests by sixteen former *Physics Today* staff members and by the National Writers Union.

What the company won't tell you is that they were out to silence me, and that firing me was the culmination of an escalating series of very repressive measures that they took to stop me from speaking out on discrimination and other workplace issues. Those measures included inaccurate, unfair and punitive 1998 and 1999 performance reviews, a gag order on me, a ban on private conversations between me and my coworkers, and a witch hunt that frightened coworkers who worked with me on workplace issues.

Physics Today management turned against me permanently at the beginning of 1997, when I made an issue of the magazine's discriminatory employment practices in a sharp way. In direct response to that, during my next annual performance review, management went back and criticized me strongly for behavior during the year prior to the one under review. (That behavior included raising the issues of the lack of diversity and lack of pay equity at *Physics Today*.) From then on, *Physics Today* subjected me to a kind of cumulative rating system in which my standing in the eyes of management was lowered by all of my past perceived misbehavior, no matter how long past. Nothing was forgotten, and every criticism of me by management was the occasion for explicit references to earlier activism. Management seemed set to welcome any opportunity to fire me.

During my 1999 performance review (8.5 months before I was fired), management criticized me harshly for circulating to the staff a memo that I wrote to management covering a number of workplace issues, the biggest of which, by far, was *Physics Today*'s discriminatory hiring practices.

I am enclosing a chronological list of some relevant events, along with some documents referred to in the list, and other information. I can provide much more information and much more detail on the enclosed information; just let me know what you need.

Please cross file my complaint with the U.S. Equal Employment Opportunity Commission.

Thank you for your action in this matter.

Sincerely,

Jeff Schmitt

S 001408

Contact information

Jeff Schmidt
3003 Van Ness Street NW #W406
Washington, DC 20008-4824

202-537-3645
jeff-schmidt@juno.com

DOB: [REDACTED]
SSN: [REDACTED]

Physics Today
American Institute of Physics
One Physics Ellipse
College Park, MD 20740
301-209-3100

The *Physics Today* staff member with whom I worked most closely on the discrimination issue was Jean Kumagai. She was based in New York City and was the only minority group member on the *Physics Today* staff. She resigned from *Physics Today* on 24 November 1999, in part because of the magazine's discriminatory employment practices. Unlike current *Physics Today* employees, she can speak freely. Here is her contact information:

Jean A. Kumagai
152 Bedford Avenue #2R
Brooklyn, NY 11211-2066

212-419-7551 (w)
718-387-4943 (h)
jak@interport.net

Science & Government Report

Volume XXX, Number 11 / June 15, 2000
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S 001410



A STAPLE OF ANIMAL RESEARCH PROTECTIONS IS COMING SOON TO HUMAN CLINICAL TRIALS

As the academic medical establishment looks to shore up its overburdened and leaky programs for protecting the human subjects of research, they're turning to a model that's long been employed in research using animals: accreditation.

A bipartisan House bill introduced June 8 with the blessing of the academic medical establishment would mandate the establishment of a government-sanctioned accreditation program for institutional human subjects protections within two years. A tiny Boston-based nonprofit called Public Responsibility in Medicine and Research (PRIM&R) has been working on such an accreditation program for more than a year, and is likely to be the entity that's given the job.

With encouragement—but no funding so far—from the National Institutes of Health and the Food and Drug Administration, PRIM&R is now nearing completion of a set of professional standards for research involving human subjects, says Executive Director Joan Rachlin. The 28-year-old organization has long provided educational programs for institutional review boards (IRBs)—the panels of scientists and others that review clinical research protocols to ensure the protection of their human subjects. PRIM&R recently formed a new paper entity, called the Association for the Accreditation of Human Research Protection Programs.

(Continued on p. 2)

SCIENCE POLICY ISSUES AREN'T TOPPING BUSH'S CAMPAIGN PRIORITIES

While the battle for the White House is well underway, the campaign of George W. Bush has just begun work on its science and technology policy, say two House Science Committee veterans who are helping out.

Bob Walker, the former chairman of the science panel, and self-styled advisor to the campaign, says he was assured by Bush long ago that the Texas governor is fully committed to basic science. Walker, now chairman of the Wechsler Group, a Washington lobbying firm, told a panel during a recent American Geophysical Union meeting that more work needs to be done on the specifics of Bush's policy, and sought input from the audience of physicists.

Rep. Vernon Ehlers (R-MI) is heading a team that is recruiting scientists to provide advice on the campaign, and has submitted a draft policy statement for the campaign's review. In an interview, Ehlers said Bush told him

(Continued on p. 2)

that such a safety margin is excessive, but others might argue that it's too conservative and we don't have enough protection.

SGR. *Has it been determined that the 5% annual spending level is the optimal level to provide this long-term security?*

Cech. Yes. We've undertaken a strategic planning program where we have included a large number of financial projections as well as programmatic evaluations. We're about two-thirds of the way done with that process. As soon as you do these financial projections you realize that if you change the market projections a little bit, the five-year downstream effect is rather different. One of the decisions we've made is if the market continues the way it is, we are going to be announcing major new programs and major new spending initiatives almost annually over the next several years. That would be good news; we'd enjoy being able to do that.

SGR. *Will these major initiatives you speak of still have to fall within this 5% disbursement cap?*

Cech. Not necessarily. We may have to adjust the 5% and it may have to be adjusted upward if we find ourselves sitting on a \$20 billion endowment in a few years. At that point, we are not going to be limited to the 5%. The endowment has grown a lot and if it would shrink a bit for a temporary time it might make the president of HHMI a little nervous but it might be the right thing to do for awhile. We have to have our plan set, but we also are going to have to retain flexibility to respond on an annual basis, to recalibrate a bit.

SGR. *Is there a role for HHMI and other charitable providers to fund research in politically sensitive areas, for example that involving embryonic stem cells?*

Cech. There have been announcements, by the Juvenile Diabetes Foundation, for example, which is funding such research. As you know it is legal, but the derivation of stem cells is not allowable with NIH funding. If you want to get into that topic of discussion *vis a vis* HHMI, Bob Potter, our communications officer, is the one who is handling inquiries about embryonic stem cell research. We want to make sure to give a consistent response. It's a sensitive enough area that we want to give a very uniform and consistent view.

SGR. *So sensitive that the president feels uncomfortable about talking about it?*

Cech. The president likes to talk, and is still growing into the job from having been a scientist and teacher, both professions where one tends to talk a lot. Now that I'm representing HHMI, a little more care has to be taken to be sure that exactly the right words are being said.

SGR. *There are some new MROs starting up—in particular the Van Andel Research Institute and the Stowers Institute. Is there a need to coordinate what all these MROs are doing to ensure that duplication isn't occurring?*

Cech. There certainly is interest in the nonprofit community to have more communication so one can get cooperation, collaboration, some of the economy that might come

from doing things together rather than duplication of effort in some areas. And that needs to be balanced against what is the real strength of the nonprofit community, which is the diversity of approaches. The beauty of the nonprofit world is that when it's operating at its best, it can be more experimental, more risk-taking, more focused on issues of particular interest to the donors to that particular nonprofit. Yes, more communication to avoid unnecessary duplication is a good thing, but uniformity would be a bad thing. Then you'd be in the terrible situation where all of the nonprofits together, with an annual budget of only a few percent of the NIH annual budget, wouldn't have an exciting impact on the system. If they were just adding incrementally a few percent more research dollars, then if they all dried up and blew away there wouldn't be much of a negative impact.

The other neat thing about the Van Andel and Stowers institutes is that they are making a regional impact in areas where they now provide a regional medical center. They're adding a lot of vitality to Kansas City and Grand Rapids, MI. You can argue that research can be done at just a few major places. But as soon as you start thinking about the fact that there is going to be public outreach and all kinds of educational spinoffs from the research program, then it's pretty exciting to have some of these MROs operating in places like this. Is there a limit to how many MROs can operate efficiently? Maybe it would be good to have some more regional ones in places that are not the traditional powerhouses of biomedical research. Maybe that will have a very special type of impact, which would not be duplicated by simply adding additional dollars to Harvard Medical School or Stanford.

NONPROFIT PAYCHECKS: THE AMERICAN INSTITUTE OF PHYSICS

A glance at the financials of the American Institute of Physics, the umbrella organization of 10 societies representing 120,000 physicists and students, shows an organization that has nearly doubled its wealth over the past few years, with net assets exceeding \$80 million at the end of 1998.

AIP's "excess"—what the commercial world calls profit—also has risen exponentially in recent years. In 1998, the most recent year for which a return on Form 990 is available, AIP reported an excess of \$12.5 million, on revenues of \$76.8 million. In 1996, the surplus was only \$7.8 million, and the year before that, \$3.5 million.

Like many other scientific nonprofits, the bulk of AIP's revenues come from its publishing operations. Subscriptions to AIP's own journals, which include such titles as *Applied Physics Letters*, *Journal of Applied Physics*, *Journal of Chemical Physics*, and *Journal of Mathematical Physics*, and to those of its member societies, such as the American Physical Society's *Physical Review* and *Physical Review Letters*, brought in \$46.6 million in 1998. Advertising in

AIP's four magazines, which include the monthly *Physics Today* sent to all members of the constituent societies, raised another \$5 million.

Marc H. Brodsky, AIP's executive director and CEO since 1993, was paid \$246,300, plus benefits of \$28,226. That's up considerably from the \$217,931 and \$27,353 he took in during 1997, but it's still at the low end of the range of pay for the chiefs of scientific societies. Richard Nicholson, executive officer of the American Association for the Advancement of Science, made \$346,407, plus \$30,774 in benefits, during 1998, although AAAS's revenues were smaller than AIP's, at \$64.6 million. And Raymond Fowler, executive director of the American Psychological Association, was paid \$229,515, plus \$127,202 in benefits, for an operation with \$76.7 million in revenues—and which operated at a small deficit that year. No one, however, comes close to the \$605,398, plus \$36,510 in benefits that went in 1997 to American Chemical Society Executive Director John Crum, who commands an operation with revenues well over \$300 million.

Number two on the AIP pay list was Darlene Walters, vice president of AIP's publishing empire. She made \$234,936 in 1998, plus benefits of \$33,064. In 1997 she was earning \$204,346 and benefits of \$31,613.

Other officers who were paid were:

James H. Stith, director of the physics program, \$133,256 and \$12,238.

Richard Baccante, treasurer and chief financial officer, \$151,044, \$26,415. Also listed for Baccante were expenses of \$24,412.

Theresa Braun, director of human resources, \$131,254, \$20,230.

Roderick M. Grant, secretary, listed as working on an "as needed" basis, \$55,279, \$4,334.

AIP's part-time directors served without pay, benefits, or expense account.

Listed as the highest-paid employees other than officers, directors, and trustees were the following, their pay and benefits:

James Donohue, publishing services director, \$147,315, \$29,743.

Margaret Judd, information technology director, \$146,346, \$26,629.

Richard Kobel, advertising/exhibits director, \$120,183, \$21,736.

Timothy Ingoldsby, product development director, \$115,000, \$23,862.

John Scott, journal publisher, \$121,507, \$6,010.

In addition, 106 other employees, from a staff numbering 590, were paid more than \$50,000.

AIP's two largest components are the American Physical Society, with about 40,000 members, and the American Geophysical Union, with 31,800. Smaller constituents are the Optical Society of America, 11,600; Acoustical Society of America, 7,200; American Association of Physics Teach-

ers, 11,600; American Astronomical Society, 6,100; American Vacuum Society, 6,000; American Association of Physicists in Medicine, 4,300; American Crystallographic Association, 2,300; and Society of Rheology, 1,800.

Previous Paychecks In This Series

(2000): National Public Radio, June 1; Federation of American Societies for Experimental Biology, May 15; American Enterprise Institute, May 1; Biotechnology Industry Organization, April 15; University of California-operated national laboratories, April 1; American Medical Association, March 15; Association of American Universities, March 1; Heritage Foundation, February 15; American Council on Education, February 1; MITRE Corp., January 15.

(1999): American Psychiatric Association, December 15; American Association for the Advancement of Science, December 1; Association of American Medical Colleges, November 15; American Psychological Association, November 1; American Chemical Society, October 15; Howard Hughes Medical Institute, October 1; National Academy of Sciences, September 15; Massachusetts Medical Society, August 15; Cato Institute, July 15; Hudson Institute, June 15; RAND, June 1; National Education Association, May 15; American Institute of Aeronautics and Astronautics, May 1; American Cancer Society, April 15; American Heart Association, April 1; Institute of Electrical and Electronics Engineers, March 15; Center for Science in the Public Interest, March 1; American Institute of Biological Sciences, February 15; UC-operated national labs, February 1; American Geophysical Union, January 15.

JOB CHANGES & APPOINTMENTS

Rear Adm. Jay M. Cohen has been appointed the chief of naval research, succeeding Rear Adm. Paul Gaffney. Cohen, who most recently has headed the Navy's Y2K office, is a Naval Academy grad with a master's degree in marine engineering and naval architecture from MIT and an extensive background in submarines. Like Gaffney, Cohen will be triple hatted, holding the additional titles of director of test and evaluation and technology requirements in the office of the chief of naval operations, as well as deputy commandant for science and technology for the Marine Corps. No word at press time whether Gaffney would take a new command or retire to pursue interests in the private sector.

E. Greg Koski, an MD-PhD and director of human research affairs for Partners HealthCare System Inc., the consortium of hospitals affiliated with Harvard Medical School, has been named to direct the Office of Human Research Protection, the newly formed entity within the Department of Health and Human Services that replaces the defunct Office of Protection from Research Risks (OPRR) at the National Institutes of Health. Koski, who will formally assume

PHYSICS TODAY MAGAZINE WORKPLACE CHRONOLOGY

1980

Jeff Schmidt graduates in physics from the University of California, Irvine, and registers with the American Institute of Physics job placement service.

Early 1981

Physics Today Editor Harold L. Davis invites Schmidt to apply for a job at the magazine.

Late February 1981

Physics Today brings Schmidt from California to New York for an interview. American Institute of Physics associate director for publishing, Robert H. Marks, promises that Schmidt can go far by staying with AIP.

17 March 1981

Schmidt begins work at *Physics Today*, at the magazine's offices in the headquarters building of the American Institute of Physics, in New York City (Manhattan).

Within a year after beginning work

Management gives Schmidt a booklet that begins, "Welcome to the staff of the American Institute of Physics." The booklet gives examples of "an employee's own time": "meal periods, scheduled breaks, and time before or after a shift."

[American Institute of Physics Employee's Handbook, January 1982, page 16]

1981–2000

Bertram M. Schwarzschild, whose timeline of employment at *Physics Today* almost exactly parallels Schmidt's, openly spends company time on personal activities (rehearsing lines for plays, making personal telephone calls, debating topics at length with coworkers, writing fiction on his office computer, sending personal e-mail, surfing the Web, playing computer solitaire and so on), but is never fired. Schwarzschild's submissive attitude toward management and open seething with irrational prejudices against minorities, women, gays and so on contrasts sharply with Schmidt's attitude and behavior.

1981–2000, most years

Schmidt is given bonuses for perfect attendance.

1981–2000

Schmidt's work is praised by the authors of the articles he edits. Many of the authors are prominent physicists.

[Various letters]

1981–2000

Schmidt does work beyond that required by his job description. For example, he helps coworkers who write news stories and he researches possible feature article topics, proposes the articles at meetings and solicits them.

[Example: agenda for 20 January 2000 articles meeting]

24 August 1983

D. Allan Bromley, the Yale University nuclear physicist and member of the White House Science Council who later became President George Bush's science advisor, praises Schmidt's editorial work on Bromley's *Physics Today* feature article. Bromley writes to *Physics Today* Editor Harold L. Davis: "I must tell you that Jeff Schmidt did an absolutely outstanding job in editing the paper I had prepared on Neutrons in Science and Technology for presentation at the 40th Anniversary of Fermi's First Reactor at the University of Chicago. I made no changes whatsoever in what he had done. You really do not know how unusual that is because, almost inevitably, I end up having giant hassles with editors who work over my papers. Let me then put in a very strong plug for Jeff."

Around 1988

Many *Physics Today* staff members oppose the firing of secretary Ruth Viera by *Physics Today* Editor Gloria B. Lubkin. Speaking for the spirit of the concerned staff, Schmidt protests to Lubkin, who drove Viera to a kind of nervous breakdown. Against Lubkin's wishes, Schmidt and many coworkers meet with Viera in the days after her firing.

27 March 1991

Schmidt is promoted from Associate Editor Level I to Associate Editor Level II based on the quantity and quality of his work.

27 July 1993

Schmidt is promoted from Associate Editor Level II to Senior Associate Editor based explicitly on the quantity and quality of his work.

[Document dated 17 February 1993; memorandum dated 27 July 1993]

October 1993

Physics Today moves from New York City to College Park, Maryland. The company moves Schmidt from New York City to Washington, D.C., on 1 November 1993.

20 December 1993

Stephen G. Benka starts work at *Physics Today* as an associate editor, a non-management position. Nine months later he is appointed Editor of *Physics Today*.

4 January 1994

Denis Cioffi and Ray Ladbury begin work as editors at *Physics Today*.

22 or 24 February 1994

Charles Harris begins work as publisher of *Physics Today*, a newly created position higher than Editor.

1994

Physics Today publisher Charles Harris authorizes Schmidt to work at home, in Washington, D.C., one day per week.

24 October 1994

S 001414

Physics Today managing editor Kenneth J. McNaughton pursues a personal 200-page journal editing project in part on office time and sends by Federal Express at company expense a heavy package associated with that project.

[Cover letter dated 22 October 1994 and sent 24 October 1994 from McNaughton to Ablex Publishing Corporation; Ken McNaughton, guest editor, *Creativity Research Journal*, Volume 7, numbers 3 and 4, 1994]

Beginning around 1995

Physics Today Editor Stephen G. Benka behaves abusively toward individual staff members, repeatedly blowing up at them, yelling at them. In one incident, Benka angrily follows *Physics Today* staff member Graham Collins out of the office, out of the building and into the parking lot.

Around 1995 to 2000

The American Institute of Physics recognizes that newly appointed *Physics Today* Editor Stephen G. Benka is deficient as a manager and requires him to attend management training classes over a long period of time.

1995–2000

Physics Today Editor Stephen G. Benka praises Schmidt's work repeatedly.

[Various documents]

25 May 1995

Schmidt tells Benka that Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem that limits the number of articles Schmidt can edit per year.

[25 May 1995 memorandum from Schmidt to Benka]

26 May 1995

Schmidt notes that Benka provided him with no work for an entire week (23 May 1995 to 30 May 1995) and that this is the third time in the past 11 weeks that Benka has let Schmidt run out of work.

[Note of 26 May 1995]

Around 8 March 1996

Physics Today publisher Charles Harris meets with Schmidt to discuss management's draft review of Schmidt's job performance. Harris decides to raise Schmidt's job performance rating from "Meets Job Requirements" to "Exceeds Job Requirements." Harris notes in a tone of regret that this change will make it harder for the company to get rid of Schmidt. Schmidt asks what Harris means. Harris explains that should the company decide to get rid of Schmidt, it would now take at least a year longer to do so, because it can't credibly lower its view of an employee's performance abruptly. (Harris says nothing to suggest that he plans to shift from the carrot to the stick in dealing with Schmidt.)

14 March 1996

Schmidt's 1996 performance review says he edited 16 articles and gives him a rating of "Exceeds

Job Requirements.”

The review says, “His comments in meetings often provide a useful counterpoint to discussions,” and “His comments and views on editorial ideas and policies, while sometimes contrarian, are generally insightful.”

[Performance review dated 12 March 1996]

11 July 1996

American Institute of Physics personnel office employee Melinda Underwood informs personnel director Theresa C. Braun that in 1995, AIP employment was deficient at the following levels and in the following ways:

- Senior managers (101): Female and minority underutilization
- Senior professionals (201): Female underutilization
- Other professionals (202): Minority underutilization

[11 July 1996 memo from Underwood to Braun]

22 July 1996

Schmidt is short of work because *Physics Today* Editor Stephen G. Benka has failed to solicit sufficient articles for the magazine. Schmidt writes a note to Benka asking for work.

[Note of 22 July 1996]

4 October 1996

The only minority on the *Physics Today* staff is also the most underpaid employee. On behalf of staff members who have been pushing for pay equity at *Physics Today*, Schmidt tells the *Physics Today* advisory committee, at their annual meeting, that the large salary differentials among the staff are not only unfair, but also divisive and bad for morale and productivity. Schmidt raised this issue at various staff meetings as well. Management is not pleased by the pressure, in part because it forces them to give the minority employee, Jean A. Kumagai, a special 25% salary increase, beginning on 1 June 1997.

15 November 1996

The *Physics Today* advisory committee issues a report strongly critical of working conditions at the magazine.

[Committee report e-mailed to staff by Benka 15 November 1996]

15 November 1996

Schmidt and some coworkers, after discussions with many more coworkers, give *Physics Today* managers and staff a list of changes that they want made at the *Physics Today* workplace. They present their requests in the form of a proposed agenda for a two-day retreat scheduled for 19–20 November 1996. Fearing reprisals for making requests that might not please management, those involved do not disclose their names; however, the fact that Schmidt played a leading role is known to all. One item calls upon the company to change its hiring practices to “increase diversity of *Physics Today* staff.”

[Document of 15 November 1996]

17 November 1996

S 001416

In response to a request for greater job security by a group of concerned staff members, *Physics Today* Editor Stephen G. Benka promises the entire staff that job security will be based on job performance. This is a change from the magazine's previous policy of "at will" employment, in which employment could be terminated for any reason.

[Document of 15 November 1996; 17 November 1996 statement by Benka]

26 November 1996

Schmidt and Jean Kumagai get *Physics Today* Editor Stephen G. Benka to send the current job opening announcement to three minority group organizations.

27 November 1996

Schmidt and Jean Kumagai update the *Physics Today* staff on the status of affirmative action efforts related to the current job opening.

Beginning around 1996

Physics Today publisher Charles Harris makes it clear to Schmidt and to many other staff members that their concerted activities have infuriated him.

After late 1996

There is a turning point in management's attitude toward Schmidt, a distinct and permanent change in management's tactics in dealing with Schmidt, a shift from trying to incorporate Schmidt into the decision-making process to trying to exclude him, a shift from the carrot to the stick. *Physics Today* publisher Charles Harris is no more Mr. Nice Guy.

Management's anger at Schmidt increases dramatically, and never subsides, when he works with Jean Kumagai and other staff members to assert the need for equal opportunity and affirmative action in hiring at *Physics Today*, to increase staff diversity. They raise the issue when Ray Ladbury leaves the magazine in late 1996, creating an opening on the editorial staff. Schmidt speaks out strongly on the issue over a long period of time, as Ladbury's position isn't filled until 6 May 1997.

3 January 1997

Schmidt tells Benka that Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem that limits the number of articles Schmidt can edit per year.

[3 January 1997 note from Schmidt to Benka]

13 February 1997

Schmidt's 1997 performance review says, "He edited 15 feature articles in this period, one shy of his agreed upon goal of 16." Schmidt is given a rating of "Exceeds Job Requirements."

The review says, "His comments in meetings often provide a useful counterpoint to discussions," and "His comments and views on editorial ideas and policies are generally insightful."

[Performance review dated 13 February 1997]

April 1997

To fill the position vacated by Ray Ladbury, *Physics Today* brings in three applicants for interviews. All are white males: Charles Day, David Ehrenstein and Corby Hovis.

Around late April 1997 (after the three white males are interviewed)

Schmidt argues strongly at a staff meeting that promising minority applicants be interviewed for the open position. *Physics Today* publisher Charles Harris and Editor Stephen G. Benka say no.

6 May 1997

Physics Today Editor Stephen G. Benka announces that the magazine has hired Charles Day to fill the position vacated by Ray Ladbury.

Benka says that after filling the position, he phoned six "very promising" applicants, mainly members of minority groups, to tell them that he will consider them for future openings. Even though these minority applicants were "very promising," none of them were brought in for interviews.

[Benka's e-mail message of 6 May 1997]

2 June 1997

Charles Day, Ray Ladbury's replacement, begins work.

Around 25 July 1997

Schmidt begins working at home, in Washington, D.C., three or four days per week.

18 August 1997

Schmidt writes to Benka about the chronic shortage of work (articles to edit). He asks Benka for more articles to edit. (Benka responds defensively, as providing the work is his job.)

[Memos of 18 August 1997, 19 August 1997, 25 August 1997, 2 September 1997]

19 August 1997

Benka surreptitiously changes Schmidt's job description to make it look like Schmidt is partly responsible for providing the work that Benka is supposed to provide but has been deficient in providing.

25 August 1997

Schmidt discovers Benka's surreptitious change in Schmidt's job description and agrees to the change because it shifts Schmidt's work from an area in which Benka has been deficient in providing work to an area in which work is available. Schmidt makes Benka write a note saying that Schmidt's job description has been changed. The new job description changes Schmidt's article editing quota from 16 per year to 14 per year.

[Note of 25 August 1997]

25 September 1997

Near the beginning of a staff retreat, Schmidt asks if staff members may ask questions. *Physics Today* publisher Charles Harris says no. Schmidt argues that staff members *should* be allowed to ask questions at a retreat. Harris angrily shouts "No, That's an order!", ending the discussion.

At the retreat itself, and in subsequent weeks, a number of Schmidt's coworkers publicly criticize Harris for the way in which he shut Schmidt up. A number of staff members — Graham Collins, for example — consider resigning.

Some days after the retreat, Harris tells Schmidt that he thought Schmidt's request for the right to ask questions was a disguised attempt to raise issues of staff concern.

1 October 1997

Gag order put on Schmidt. *Physics Today* publisher Charles Harris and Editor Stephen G. Benka hand Schmidt a written "notice" that implies that Schmidt will be fired the next time he says anything that management considers to be "counterproductive." The notice also orders Schmidt not to tell his coworkers that he is under this restriction.

[Document dated 26 September 1997.]

15 October 1997

In a written statement to the *Physics Today* staff, publisher Charles Harris says that "the staff should be free to engage in constructive criticism and discussion without fear of retribution" and promises that "while we can't guarantee life employment,... continued employment is based on satisfactory performance."

[Statement of 15 October 1997]

17 October 1997

Schmidt and a group of coworkers, in a written grievance presented to the *Physics Today* advisory committee at its annual meeting on 17 October 1997, ask for relief from "the increasingly repressive work environment at the magazine." The appeal describes how *Physics Today* staff members Jeff Schmidt and Graham Collins have been warned about speaking up about workplace problems. It says, "Both Jeff and Graham have been outspoken about problems that many of us see at the magazine. We feel that the [gag orders on them] contribute to a repressive atmosphere at the magazine and restrict all of us."

Schmidt meets with the committee privately and, on behalf of concerned *Physics Today* employees, objects to the magazine's discriminatory employment practices and failure to live up to its claim that it is an affirmative action employer.

In the weeks and months following 17 October 1997

Physics Today publisher Charles Harris harshly criticizes Schmidt for his leading role in the presentation of staff concerns to the *Physics Today* advisory committee on 17 October 1997, telling Schmidt and others incorrectly that Schmidt tried to get him fired. Harris makes it clear that he sees Schmidt's actions as an unforgivable offense that obligates Harris as a matter of manly honor to fire Schmidt or eventually drive him out and that gives Harris the moral right to do that by any means.

24 October 1997

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky, Schmidt's boss's boss's boss's boss, accuses Schmidt of making "a very, very serious charge" about *Physics Today*'s hiring practices. Brodsky demands that Schmidt bring him the evidence.

[Extensive notes available.]

24 October 1997

Gag order put on Graham Collins. *Physics Today* management lets staff know that problems are to be discussed with managers on an individual basis only. This is communicated to the staff through a warning to Graham Collins and in other ways.

Collins sends an e-mail message to the non-management *Physics Today* staff with the subject line: "My coming silence."

[24 October 1997 e-mail from Collins]

4 November 1997

Schmidt and Jean Kumagai work together to prepare the document on equal employment opportunity and affirmative action that Schmidt will give to American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky on 5 November 1997.

[4 November 1997 e-mail from Kumagai to Schmidt]

5 November 1997

Schmidt meets with American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky for one hour and gives Brodsky a written statement summarizing *Physics Today*'s discriminatory hiring practices and lack of promised affirmative action.

[Two-page document dated 5 November 1997; extensive notes from meeting available]

Schmidt tells Brodsky that AIP failed to conduct the equal employment opportunity and affirmative action training that it promised the federal government it would conduct. AIP made that promise in its 284-page "1996 Affirmative Action Program for American Institute of Physics," a document signed by Brodsky and filed with the federal government at the government's request.

[Pages 44-45 of the 284-page document (Schmidt's page numbering)]

Brodsky counters by saying that he is pretty sure that he mentioned affirmative action either at the one-hour question-and-answer session that he held at AIP headquarters on 20 June 1996 or at the Q&A meeting that he conducted for employees at AIP's facility in Woodbury, New York. He indicates that this mention (which, in fact, did not occur at the headquarters meeting) was the promised equal employment opportunity and affirmative action "training."

Brodsky promises to look into affirmative action at *Physics Today* and tell Schmidt what he finds.

7 November 1997

Schmidt suggests that American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky speak with *Physics Today* staff member Jean Kumagai about discrimination and affirmative action at the magazine. Kumagai, the only member of a minority group at *Physics Today*, has been concerned about the issue and has been working on it. Brodsky fails to contact Kumagai.

[7 November 1997 e-mail message from Schmidt to Brodsky]

Around 13 November 1997

Coworkers force management to rescind the gag orders on Schmidt and Graham Collins. The gag orders had outraged many coworkers, most of whom were afraid to speak out on their concerns but valued Schmidt and Collins doing so for them. Many staff members openly criticized the gag orders, forcing *Physics Today* publisher Charles Harris, at the November 1997 monthly staff meeting, to agree to rescind them. Harris does so reluctantly and without any decrease in his anger toward Schmidt and Collins.

[E-mail message of 1 December 1997.]

2 December 1997

Management rescinds the gag orders on Schmidt and Graham Collins.

[E-mail messages of 2 December 1997.]

19 January 1998 — Martin Luther King holiday

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky tells Schmidt that he is still looking into the equal employment opportunity and affirmative action issues that Schmidt raised. Schmidt answers on behalf of the concerned staff, saying, "We'll stay tuned."

[19 January 1998 e-mail messages between Brodsky and Schmidt]

22 January 1998

Schmidt appeals to *Physics Today* publisher Charles Harris for relief from the pressure to take on additional (clerical) work. Harris says he is not inclined to give Schmidt any consideration, because of Schmidt's and Graham Collins's previous-year organizing activity, which Harris says is a threat to Harris's own job.

[4 February 1998 letter from Schmidt to Collins]

28 January 1998

Physics Today Editor Stephen G. Benka breaks up two conversations between Schmidt and coworker Toni Feder after working hours.

Benka bans private conversations in the workplace, saying that all conversations between staff members must be open to monitoring by management.

When Schmidt asks Benka why, Benka refers to the organizing activity that took place the previous year and says he doesn't want that to happen again.

Management's disruptions of the two Schmidt/Feder conversations on 28 January 1998 and ban on future private conversations appear to be aimed specifically at Schmidt even though Benka says the rule applies to all employees.

[4 February 1998 letter from Schmidt to Collins]

Shortly after 28 January 1998

News of management's dislike of private conversations in the workplace spreads quickly throughout the staff (by way of private conversations) and puts a chill on everyone's expression.

Paul Elliott complains to *Physics Today* publisher Charles Harris about the ban on private conversations between staff members. Harris takes no action.

20 March 1998

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky meets with Schmidt and tells Schmidt that Brodsky investigated *Physics Today*'s hiring practices and found that the magazine's affirmative action program was doing very well. Brodsky explains that he judges the program by its results. At the time, *Physics Today* has an all-white staff of 18 employees, with only one exception.

Schmidt asks Brodsky again (as he did on 5 November 1997) about the equal employment opportunity and affirmative action training that Brodsky promised the federal government that AIP would conduct. After extensive questioning by Schmidt, Brodsky says that his supposed mention of the issue at the Q&A meetings constituted only "part of" the promised training. Schmidt then asks Brodsky to do "the rest of the training." Brodsky very reluctantly promises to look into it, but such training is never conducted.

At the end of the meeting, Schmidt tells Brodsky that Schmidt and the other concerned *Physics Today* staff members still believe that their concerns about the lack of diversity in *Physics Today*'s hiring are well founded, and that the concerned staff are therefore disappointed with Brodsky's response. Brodsky's apparent view of the upshot of what happened is that Schmidt leveled totally unfounded charges at AIP, and Brodsky is not happy about that.

[Notes of 20 March 1998 meeting available]

20 March 1998

During Schmidt's meeting with American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky about staff concerns about discrimination and lack of affirmative action in hiring at *Physics Today*, Brodsky tells Schmidt that some of Schmidt's workplace activities, presumably reported to Brodsky by *Physics Today* publisher Charles Harris, are "counterproductive."

[Notes of 20 March 1998 meeting available]

24 March 1998

Schmidt meets with *Physics Today* Editor Stephen G. Benka to discuss his 1998 performance review. Benka condemns Schmidt's organizing activities at the magazine, focusing in particular on Schmidt's leading role in the concerted activity around the 19–20 November 1996 *Physics Today* retreat, even though that activity occurred before the period covered by the review. Part of that activity aimed at changing *Physics Today*'s hiring practices to "increase diversity of *Physics Today* staff."

Benka characterizes the staff actions in which Schmidt has played a leading role as nothing more than "disruptive." Benka says: "You have spent a lot of time in, shall we say, disruptive efforts."

This meeting is the first performance review discussion in which Benka criticizes Schmidt for his organizing activities around the 1996 retreat. Benka strongly condemns this 1996 concerted

activity, in which staff members anonymously proposed an agenda that addressed their concerns. Benka calls the group of staff members who did this “your cabal.” He calls them “people who wouldn’t step forward,” but he talks as if he has no doubt that Schmidt was not only one of them, but also a leading member. Referring to the group’s efforts to get its concerns discussed, Benka warns Schmidt: “Anything — any behavior that generates such feelings, such divisions, such divisiveness, such disruption among the staff — is not going to be tolerated anymore.”

Schmidt tells Benka that staff members fear reprisal for speaking out about workplace problems. Benka responds: “Now, why would they fear that? If they’re acting in good faith, then why would they fear it? But if they’re not acting in good faith, they may have reason. If they’re acting in order to engender divisiveness and trouble, if they’re acting in bad faith, they may have reason to fear.” Benka adds: “If they’re that afraid, maybe they should go where they’re less afraid — if it’s that unbearable.”

The performance review lowers Schmidt’s performance rating from “Exceeds Job Requirements” to “Meets Job Requirements” even though Schmidt did more work and more innovative work. The review makes what it admits are “new demands,” which amount to a sharp increase in Schmidt’s workload — from 14 feature articles per year to 18 — a 28 percent jump.

Schmidt: “I don’t know of any others who have been asked to increase the amount of work they do.”

Benka: “Oh yes they have” [repeats this a few more times].... I don’t know why it’s taken this long to ask you to increase as well.”

Schmidt asks Benka to make corrections in the review. After consulting with *Physics Today* publisher Charles Harris, Benka refuses to make any changes in the review.

In its employee handbook, the American Institute of Physics promises employees that their annual performance review will feature a discussion of “mutual goals.” Without explanation, Benka follows neither the letter nor the spirit of this policy, and doesn’t even pretend to be interested in what direction Schmidt might want to go in his work at AIP. The discussion is unlike anything Schmidt had experienced in previous years. Benka simply announces a big change in Schmidt’s job description — an increase in Schmidt’s workload by as much as three months’ worth of work per year — and discusses it as if he were a dictator giving orders. Rather than follow the participatory process promised in the employee handbook, management changes Schmidt’s job description by unilateral dictate, without discussion or agreement.
[Notes of 24 March 1998 meeting available]

24 April 1998

Schmidt’s fellow outspoken coworker Graham Collins leaves *Physics Today*. In explanation of the dissatisfaction that drove him to resign, Collins tells the American Institute of Physics that “Marc Brodsky [AIP executive director and chief executive officer] wishes to believe that the only problems are employees who complain too much.”
[Collins’s exit interview form, 24 April 1998]

27 April 1998

S 001422

Schmidt appeals his 1998 performance review to American Institute of Physics director of human resources Theresa C. Braun and director of physics programs James H. Stith. The appeal details some of the ways in which the review is inaccurate and explains how it is a reprisal for Schmidt's organizing activity and is part of a series of attempts to stop him from engaging in further concerted activity at *Physics Today*. The appeal puts greatest emphasis (more than 13 pages) on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. Schmidt shows his appeal to 12 coworkers.

[Document dated 27 April 1998]

30 April 1998

The American Institute of Physics formalizes its computer use policy, saying that it "makes its computer equipment available to employees for personal use" on a causal basis for non-commercial purposes such as "educational, recreational, hobby, and community service."

[18 June 1998 memorandum from Marc H. Brodsky to all AIP employees]

25 June 1998

Schmidt meets for two hours with American Institute of Physics director of physics programs James H. Stith about Schmidt's 1998 performance review appeal. Stith refuses to make any corrections at all in Schmidt's 1998 performance review.

Stith does not defend the review's criticisms of Schmidt, nor does he dispute Schmidt's detailed claim that the review makes many false statements about Schmidt. Stith says he decided to leave these statements in the review (and thus in Schmidt's permanent personnel record) because he had talked to *Physics Today* managers Charles Harris and Stephen G. Benka, who told him other things about Schmidt — things not mentioned in the review — and these things justified the lowering of Schmidt's job performance rating. Despite vigorous questioning by Schmidt, Stith refuses to say what these things are. However, Stith makes it clear that the problem is Schmidt's organizing activity, just as Schmidt had claimed in his appeal. Stith tells Schmidt that when you do things that your supervisors would be happier that you not do, then you have to be willing to pay the penalty, even if what you do is right. Schmidt responds that he expects Stith to protect people from being punished for doing the right thing. But Stith makes it clear that he will not play that appellate role at AIP. Stith says that in his younger days, he challenged the status quo. He says that even after the status quo yielded to change, he still had to pay a price for his actions, implying that paying such a price was right.

Schmidt appeals the ban on private conversations in the workplace to Stith. Stith tells Schmidt he knows about the ban, which was described in Schmidt's 27 April 1998 performance review appeal. Schmidt asks Stith to retract it. Stith promises to look into it, but never lifts the ban.

[Stith's memo of 24 June 1998; notes of 25 June 1998 meeting available]

20 August 1998

Schmidt meets with American Institute of Physics director of physics programs James H. Stith about Schmidt's 1998 performance review. Stith admits repeatedly that the performance review was "subjective," but he refuses to put that in writing.

[Notes of 20 August 1998 meeting available]

23 September 1998

Schmidt notes in an e-mail message to a coworker that *Physics Today* Editor Stephen G. Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem.

[23 September 1998 e-mail message to coworker]

6 October 1998

Physics Today publisher Charles Harris, in a conversation with Schmidt, criticizes the management abilities of *Physics Today* Editor Stephen G. Benka and tells Schmidt that Harris is going to take away Benka's right to issue performance reviews and memos concerning personnel matters on his own. Harris will have to approve all such material before it is issued.

[6 October 1998 note written on memo of 1 October 1998]

Mid-December 1998 to mid-June 1999

Schmidt takes a six-month unpaid leave of absence.

Around 2 March 1999

Physics Today publisher Charles Harris is fired.

Mid-June 1999

Physics Today Editor Stephen G. Benka criticizes Schmidt harshly (and for the first time, even though it has been 14 months since it happened), for showing his 1998 performance review appeal to coworkers. That document reviews workplace issues, focusing most closely on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. Benka says, "You are lucky you still have your job after doing that."

29 June 1999

In response to the sharp increase in his workload imposed by management, Schmidt asks to work on a 2/3-time basis, writing in his request that "after all these years, at my age, I am not prepared to take on additional work."

[Memo of 29 June 1999]

9 August 1999

Benka tells Schmidt that his request to work 2/3 time has been approved and will take effect 20 September 1999.

17 August 1999

Schmidt is given an inaccurate and punitive 1999 performance review covering February 1998 to August 1999.

The review says, "During this review period, Jeff repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of *Physics Today*. Such behavior is unacceptable." An example of such behavior, according to the review, is Schmidt's showing coworkers his 1998 performance review appeal — the document that focuses most closely on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. The 1999 review criticizes and punishes Schmidt

for this communication with coworkers. It says that such communication serves to "undermine...the staff's respect for management."

[Performance review dated 13 August 1999; Schmidt's 19 August 1999 comments on the review; Benka's 19 August 1999 response to Schmidt's comments]

19 August 1999

Schmidt meets with Benka about his 1999 performance review. Benka admonishes Schmidt for talking to coworkers about the punitive review, which Benka wanted to keep secret. Benka verbally demands that Schmidt tell him which coworkers Schmidt has spoken with about issues raised in Schmidt's 1999 performance review. Schmidt refuses. Benka insists. Schmidt says he will ask the coworkers for permission. (In an e-mail message later the same day, Benka says, "I still would like you to tell me which member or members of the staff you have discussed this year's review with.") Benka says he is concerned about Schmidt talking to coworkers because Schmidt has a lot of influence in the workplace. Soon after Benka's 19 August 1999 demands, Schmidt and coworkers confer and decide how to respond to Benka.

[Notes on 19 August 1999 meeting available]

26 August 1999

Schmidt reports to Benka that Schmidt and coworkers decided that Schmidt should not reveal any names to Benka or give Benka anything that Benka could use to try to identify which staff members are involved in private discussions. Schmidt and coworkers decided that Schmidt should give Benka only a verbal report on their views, based on notes that they agree on. Schmidt does that, but Benka then demands that Schmidt give him the notes, too. [Notes of 26 August 1999.] Schmidt refuses but agrees to consult again with coworkers. Schmidt and coworkers decide that Schmidt will give Benka a brief, agreed-upon written report, which Schmidt does.

Benka states his opposition to private conversations between staff members, saying that everything is in his domain. Schmidt, speaking on behalf of many staff members (those he consulted), defends private conversations.

[Notes on 26 August 1999 meeting available; memo dated 30 August 1999]

26 August 1999

Schmidt and Benka agree to change Schmidt's job description back to 80 percent article editing.

17 September 1999

Schmidt and the American Institute of Physics enter into an agreement specifying the amount of work Schmidt will do and what he will be paid in return for doing that work. The written agreement is approved by Schmidt and signed by a director of the American Institute of Physics (James H. Stith).

[Document dated 14 September 1999]

20 September 1999

Schmidt begins 2/3-time work with full benefits.

S 001425

24 November 1999

Jean Kumagai leaves *Physics Today*, in part because of *Physics Today*'s discriminatory practices and affirmative action hypocrisy. Kumagai was widely considered to be one of the best editors at the magazine. She was one of Schmidt's partners in concerted activity.

24 November 1999

Jean Kumagai's 24 November 1999 departure leaves *Physics Today* with an all-white professional staff (editors and writers) and an all-black staff of secretaries.

9–10 November 1999

Schmidt requests permission to either use his accumulated vacation time or carry it over to the year 2000; his request concerns only the amount of vacation time beyond the amount that is automatically carried over to the next year. (Verbal request 9 November 1999; written request 10 November 1999.) Management doesn't respond for a full month, giving vacation-use permission on 10 December 1999, which does not leave enough time in the year for Schmidt to plan and use all the vacation time. Management's response is partial, saying that the issue of carryover will be addressed later. After many written communications with Schmidt and two meetings with him over a period of a few months, management makes Schmidt forfeit much of his vacation time. Also, without Schmidt's knowledge and without notification, the amount of vacation time that he is allowed to carry over automatically (to the year 2000) is lowered to 175 hours from 262.5 hours the previous year; Schmidt discovers this after the fact, when he sees his earnings statement of 15 January 2000.

Schmidt's coworker Paul Elliott is in an identical situation and makes an identical request exactly one week after Schmidt's 10 November 1999 request. However, management allows Elliott to carry over to the year 2000 all of his unused vacation time — but makes him promise not to tell his coworkers.

After Schmidt is fired, he is paid for his remaining vacation time, which does not include his forfeited vacation time. He is paid for only two of the total of four "personal days" and "bonus days" due him.

[E-mail messages of 10 November 1999, 23 November 1999, 13 December 1999, 15 December 1999, 5 January 2000, 13 March 2000, 15 March 2000, 16 March 2000, 28 March 2000, 6 April 2000, 11 April 2000; note of 9 November 1999; memoranda dated 10 December 1999, 3 April 2000; notes of 15 March 2000 meeting with Nanna available, notes of 5 April 2000 meeting with Nanna and Benka available]

5 April 2000

Schmidt meets with *Physics Today* publisher Randolph A. Nanna and Editor Stephen G. Benka about vacation carryover. When Schmidt objects to AIP's decision to make him pay for AIP's admitted mistake, Nanna says, "And that's my opinion [too]. Would I like it done to me? Probably not."

[Notes of 5 April 2000 meeting]

5 April 2000

In the course of Schmidt's meeting with *Physics Today* publisher Randolph A. Nanna and Editor Stephen G. Benka about vacation carryover, Benka praises Schmidt's job performance in

glowing terms: "You're editing at a level that I find very good. At a level, frankly, I haven't seen from you before. It's terrific."

[Notes of 5 April 2000 meeting]

Around or just after mid-May 2000

Schmidt and coworker Toni Feder are talking alone in the *Physics Today* art office when *Physics Today* Editor Stephen G. Benka enters the room and points out to them that he noticed that they stopped talking when he showed up.

22 May 2000

Schmidt's immediate supervisor, *Physics Today* Editor Stephen G. Benka, learns of Schmidt's book, *Disciplined Minds*, when Benka comes upon a *Physics Today* staff member reading an article about it in the "Hot Type" column of the 26 May 2000 issue of the *Chronicle of Higher Education*.

30 May 2000

Historian Spencer Weart, director of the American Institute of Physics Center for History of Physics, reviews *Disciplined Minds* and sends his comments to Schmidt. Weart gives the book a very positive review and approves it for inclusion in the physics community section of the Niels Bohr Library, a specialized collection with limited space.

Schmidt distributes Weart's review to all *Physics Today* staff and management.

[30 May 2000 e-mail from Weart to Schmidt and 30 May 2000 e-mail from Schmidt to *Physics Today* staff and management]

Around 31 May 2000

Schmidt fulfills his entire annual review-period work quota in the first 10 months of the period. That is, he is two months ahead in his work.

31 May 2000, morning

Physics Today fires Schmidt.

31 May 2000, afternoon

Physics Today Editor Stephen G. Benka goes from office to office at *Physics Today*, telling each staff member that American Institute of Physics executive director and chief executive officer Marc H. Brodsky authorized him to say why Schmidt was fired. Benka tells people that Schmidt was fired for doing something other than what he was paid to do.

9 June 2000

The *Chronicle of Higher Education* reports *Physics Today*'s firing of Schmidt.

9 June 2000

Schmidt's long-time *Physics Today* coworker Bert Schwarzschild, in a telephone call to Schmidt, details Schwarzschild's use of office time and details his annual workload. The amount of break time Schwarzschild takes is very much greater than the two 15-minute breaks specified in the employee handbook, and his annual workload is significantly less than Schmidt's, because

management counts his short "picture caption" stories as "big-ticket items."
[Notes available]

12 June 2000

The National Writers Union protests *Physics Today's* firing of Schmidt.
[Union press release of 12 June 2000]

15 June 2000

Journalist Marlowe Hood, a former *Physics Today* staff member who was involved in concerted workplace activity with Schmidt, protests the firing of Schmidt.

Before 16 June 2000

Physics Today charges Schmidt with misconduct, telling the State of Maryland Department of Labor, Office of Unemployment Insurance, that "The employee admittedly used company time to work on a personal project over an extended period of time."

16 or 19 June 2000

Physics Today tells Maryland Department of Labor, Office of Unemployment Insurance, claim examiner Tasha Owens, as evidence that Schmidt was writing the book on company time, that Schmidt had asked for reduced hours.

20 June 2000

Regarding Schmidt's request to work reduced hours, state examiner Owens tells Schmidt that the company "did not specify why you needed that time." According to the company, said Owens, "you didn't say what it was for; you just asked for reduced hours. And that they granted you the request." Owens tells Schmidt that the company "could not say what hours you spent doing the book. They don't know."

21 June 2000

Sixteen former *Physics Today* staff members, including many who were involved in concerted workplace activity with Schmidt, protest the firing of Schmidt.

24 June 2000

Princeton University physicist M. V. Ramana protests *Physics Today's* firing of Schmidt.

26 June 2000

Physicist Kajoli Krishnan protests *Physics Today's* firing of Schmidt.

26 June 2000

George Washington University management professor Denis Cioffi, a former *Physics Today* staff member who was involved in concerted workplace activity with Schmidt, protests firing of Schmidt.

26 June 2000

George Washington University expert systems professor Thomas Nagy protests firing of Schmidt.

26 June 2000

State of Maryland Department of Labor, Unemployment Office, issues its determination, finding no evidence that Schmidt engaged in even simple misconduct on the job by writing *Disciplined Minds*. The state awards Schmidt full benefits, retroactive to 4 June 2000. *Physics Today* does not appeal the state's finding.

28 June 2000

Physicist Vikram Vyas protests *Physics Today*'s firing of Schmidt.

30 June 2000

Physicist Surendra Gadekar protests *Physics Today*'s firing of Schmidt.

5 July 2000

Chris Garlock, editor of the online newsletter of the Washington, D.C., local of the National Writers Union, notes that physicist Albert Einstein wrote the theory of relativity in part during his spare time at the Swiss patent office, where he was employed.

STATE REJECTS *PHYSICS TODAY*'S CHARGE OF EMPLOYEE MISCONDUCT

The State of Maryland Department of Labor conducted a surprisingly detailed investigation into the circumstances under which *Physics Today* fired me. On 26 June 2000 the department issued its "determination," rejecting the magazine's claim that I engaged in misconduct on the job by writing *Disciplined Minds*.

The investigation was prompted by my request for unemployment benefits, because eligibility for such benefits is limited to people who lose their jobs "through no fault of their own." Thus, if you quit your job or are fired for misconduct, you may not be entitled to benefits.

An unemployment office examiner explained to me that "Some employers send us information and indicate that they do not wish to dispute the claim." Such a statement paves the way for the employee to get benefits. *Physics Today* didn't do that. Instead, the magazine sought a ruling in its favor, which would not only punish me further and save the magazine money, but also give the magazine political support in the form of third-party validation of its action against me. Thus, *Physics Today* charged me with misconduct, telling the state that "The employee admittedly used company time to work on a personal project over an extended period of time." This made an investigation necessary so that the state could determine independently whether or not I engaged in misconduct.

The centerpiece of the investigation was a hearing that took the better part of an hour, during which I offered a very different theory of why the magazine fired me. I said that *Physics Today* fired me for political reasons — specifically, management didn't like the radical content of the book and was looking for an excuse to get rid of me because of my workplace activism.

Department of Labor examiner Tasha Owens conducted the hearing by telephone. I waived my right to representation, figuring that I could present the facts as well as anyone. Owens interviewed me first, for 28 minutes. To test the company's claim, she asked me questions about how much time at the office I spent writing the book. (Answer: Break time.) To test my claim, she asked me questions about whether or not the company ever asked me how much time at the office I spent writing the book. (Answer: No, they didn't seem to care about that.) At the end of the interview, she scheduled me for a follow-up interview to give me the opportunity to rebut points that *Physics Today* would make in its interview.

However, Owens didn't call at the appointed time, and so I called her and asked why. She said, "There was nothing to rebut." Interestingly, *Physics Today* and I agreed about what I did, and disagreed only about whether or not my actions constituted misconduct. AIP, she said, "gave me the same information that you gave me."

Having gathered the facts, Owens had to make a decision. According to Susan R. Bass, an administrator in the office of the executive director of Maryland's unemployment insurance program, Owens had three levels of employee misconduct to choose from:

- o Simple misconduct — Here the fired employee gets “delayed benefits,” which begin after a five to ten week waiting period.
- o Gross misconduct — No benefits.
- o Aggravated misconduct — No benefits, and reduced eligibility for benefits following subsequent employment.

Owens ruled that my work on the book didn’t even rise to the level of simple misconduct, and so she awarded me full benefits, retroactive to 4 June 2000. I will receive up to \$6,500, which the American Institute of Physics, the magazine’s publisher, will pay for through increased unemployment insurance premiums.

Physics Today was given the opportunity to appeal the state’s finding, but did not do so. If *Physics Today* sincerely believed its own story that it fired me for real misconduct on the job, and not just for political misconduct, it could have — and I think would have — appealed. The magazine would have appealed not only to save thousands of dollars, but also to dispel the implication that its motives for firing me weren’t squeaky clean.

The hearing was a high-anxiety event because a lot was at stake, both monetarily and politically. Strangely, however, it was also fun, because it was so different from the way I was used to seeing disagreements resolved in the *Physics Today* workplace, where power so often trumps reason (see appendix below for an example). It was a pleasure to speak the truth outside of that repressive hierarchy; the favorable decision was just icing on the cake. The ruling means that *Physics Today* fired me for a reason other than “misconduct in connection with the work.” Who will see that reason as anything other than political misconduct? *Physics Today* now has to consider the possibility that both the hearing and the third-party perception of its behavior are previews of future events.

Appendix — Example: Affirmative action

There are countless examples of power trumping reason in the *Physics Today* workplace, and I will summarize just one here.

Beginning a few years ago, I worked with Jean Kumagai and other *Physics Today* staff members to get the magazine to live up to its claim that it is an affirmative action employer. After many months of being largely ignored, we decided to raise the issue with the *Physics Today* advisory committee. I spoke to the committee on behalf of the concerned staff, and the committee reported our concerns to American Institute of Physics Executive Director and Chief Executive Officer Marc Brodsky, my boss's boss's boss's boss. Brodsky then contacted me and told me that I had made "a very, very serious charge." He demanded that I bring him the evidence. I did, in a written statement (available) and in an hour-long meeting with him. He said he would investigate the matter.

Five months later, Brodsky summoned me to his office to close the case. His conclusion: *Physics Today*'s affirmative action program was doing very well. He explained that he judges the program by its results. But what were the results? At that time, 20 March 1998, *Physics Today* had an all-white staff of editors and writers, with one exception. Since then, that one person has found other employment, in part because of her frustration over the magazine's affirmative action hypocrisy.

As of this writing, two years after Brodsky proclaimed affirmative action alive and well at *Physics Today*, the magazine has an all-white staff of editors. I'm not talking about a staff of four or five editors, who might all be white by coincidence. I'm talking about an all-white staff of 17 editors. (At least the magazine has hired minority group members as secretaries.) *Physics Today*'s editors do not look like the physics community, the journalism community, the Washington, D.C., community where the magazine is based, or the nation as a whole.

27 July 2000

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF UNEMPLOYMENT INSURANCE

NOTICE OF BENEFIT DETERMINATION

SSN: [REDACTED]
DATE MAILED: 06/26/2000
BENEFIT YEAR BEGINS: 06/04/2000

COLLEGE PARK CLAIM CENTER
P.O. BOX 1901
COLLEGE PARK MD 20740

MAIL REQUEST FOR APPEAL TO
LOCAL OFFICE ADDRESS ABOVE

JEFF SCHMIDT
3003 VAN NESS ST NW APT W406
WASHINGTON DC 20008 4830

ISSUE SIMPLE MISCONDUCT
SECTION OF LAW 8-1003
DATE OF DETERMINATION 06/26/2000
SPECIALIST ID EWCP1A

AMERICAN INSTITUTE OF PHYSICS
INCORPORATED
1 PHYSICS ELLIPSE
COLLEGE PARK MD 20740 3842

THE LAST DAY TO FILE AN APPEAL IS: 07/11/2000
(IF THIS DECISION IS CHANGED ON APPEAL, THE CLAIMANT
WILL BE REQUIRED TO REPAY ANY RESULTING OVERPAYMENT.)

DETERMINATION:

THE CLAIMANT WAS DISCHARGE FROM AMERICAN INSTITUTE OF PHYSICS ON 6/2/00
BECAUSE IT WAS ALLEGED THAT THE CLAIMANT WROTE A BOOK ON COMPANY TIME.

INSUFFICIENT INFORMATION HAS BEEN PRESENTED TO SHOW THAT THE CLAIMANT'S
ACTIONS CONSTITUTED MISCONDUCT IN CONNECTION WITH THE WORK. AS A RESULT, IT IS
DETERMINED THAT THE CIRCUMSTANCES SURROUNDING THE SEPARATION DO NOT WARRANT
A DISQUALIFICATION UNDER SECTION 8-1002 OR 8-1003 OF THE MARYLAND UNEMPLOYMENT
INSURANCE LAW.

BENEFITS ARE ALLOWED, IF OTHERWISE ELIGIBLE.

S 001433

APPEAL RIGHTS:

CLAIMANT AND EMPLOYER: Section 8-509 of the Maryland Unemployment Insurance Law provides the right to appeal this determination. The appeal must be in writing and may be submitted in person or mailed to the Local Office within (15) days of the determination. If mailed, the appeal must be postmarked within (15) days of the date of this determination. A claimant who appeals a determination and remains unemployed must continue to file timely claims for each week. NO LATE CLAIMS WILL BE ACCEPTED. If an appeal decision results in reversal or modification of this determination, the claimant may be paid benefits previously denied or may be overpaid benefits previously paid.

Losing Their Religion



BOOKS

immigrant Korean women or improve the transparency of the political campaign system. So they dutifully went to law school or enrolled in graduate programs in political science. Now, as they near graduation, some of them talk of the intellectual satisfactions of protecting major-label record companies against Internet interlopers or of maximizing the efficiency of New York's workfare program. What happened?

Is it that the graduates, older and wiser, have found a weakness in their adolescent dreams of social justice and democratic improvement? Or is it that the system of graduate education itself eviscerated their aspirations?

D.C. resident Jeff Schmidt would say that these newly minted professionals are still making a difference in society—just not the kind they'd once hoped to make. Indeed, he argues in *Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System That Shapes Their Lives* (Rowman & Littlefield) that students' professional choices—and the lifetime of decisions they can look forward to making as professionals—have a more powerful impact on democracy than their votes do. The reason, he says, that 80 percent of the entering students at Harvard Law School say they want to pursue a career in public service but 90 percent take jobs at corporate law firms after graduation is that the professional world demands their "ideological discipline," or adherence to an assigned point of view. Professional education transforms not just what you know, but who you think you are as well.

Schmidt, a former editor of the College Park, Md.-based science monthly *Physics Today*, has collected two decades of reflection on the problem of graduate training and professional life into his 280-page book. Schmidt holds a Ph.D. in physics from the University of California, Irvine, but you don't have to be a laser jock or lab rat to see that graduate programs combine sleep deprivation, too much work, rigorous competition, social isolation, and pressure to pursue particular pathways—and force students to accept the regimen or be booted from the program. This is a strategy designed to reshape a young person's social and political preferences, says Schmidt. "[Students] enter professional training with deeply held feelings about the personal and societal promise of professional work, and during professional training struggle against what often amounts to a brutal attempt to change their very identities," he writes. The struggle of their lives, as any disgruntled associate at a law firm will tell you, is to square their beliefs with the bullying of their profession.

To lessen the conflicts, says Schmidt, the professions require that future workers be transformed while they're still trainees. These transformed employees then can "work within an assigned ideology rather than from a specific list of tasks, because the professional works with unpredictable events," says the 54-year-old author. And

so the creative work goes to those who can be trusted not to stray from the path, while more creative types often find themselves working as waiters. (Schmidt does not except journalists from his critique of the professions.)

Schmidt's effort to help grad students resist their indoctrination through such chapters as "How to Survive Professional Training with Your Values Intact" was met with some resistance at *Physics Today*. In late May, Schmidt was fired after 19 years on the job, he says, for allegedly writing the book on company time. He successfully contested that charge with the State of Maryland Department of Labor and is now collecting unemployment benefits.



We're All Dissonant Beings: Jeff Schmidt with future worker (and daughter) Joshua Rose Schmidt

"The people who were most concerned about others seemed to be the least likely to survive," says Schmidt of his time in grad school. Not much seems to have changed for him, even in the working world.

—Garance Franke-Ruta

WASHINGTON
CityPaper
WASHINGTON'S FREE WEEKLY VOL. 20, NO. 30 JULY 28–AUG. 1, 2000

THE CHRONICLE

of Higher Education®

DISCIPLINE THIS: Jeff Schmidt says his employers at *Physics Today* disliked his new book, *Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System That Shapes Their Lives* (Rowman & Littlefield), so much that they decided to discipline him. In fact, they fired him.

Mr. Schmidt believes the trouble began after his boss, **Stephen G. Benka**, caught a co-worker reading an item about the book in *Hot Type* ("Steal This Book," May 26). "She was laughing out loud when my boss came along and asked, 'What's so funny?'" says Mr. Schmidt. Apparently, Mr. Benka was not amused by Mr. Schmidt's statement, quoted from the book, that he'd written *Disciplined Minds* partly on time stolen from work.

"He read it right there, but he didn't laugh," says Mr. Schmidt.

The following Wednesday, May 31, Mr. Benka asked him to join the publisher, **Randolph A. Nanna**, for a trip to the human-resources department. There a human-resources professional told him that he was being "terminated with cause" after 19 years at the magazine, during which Mr. Schmidt says he'd consistently received above-average or satisfactory evaluations. Then he was escorted out of the building without being allowed to return to his office.

Neither Mr. Nanna nor Mr. Benka would comment. **Theresa C. Braun**, director of human resources for the nonprofit American Institute of Physics, which publishes the magazine, said only that Mr. Schmidt "was not terminated because of the [*Chronicle*] article, nor because of the general content of the book."

Mr. Schmidt, who earned a Ph.D. in physics from the University of California at Irvine, says they told him that the very existence of the book was evidence that he wasn't "fully engaged" at *Physics Today*.

Hot Type

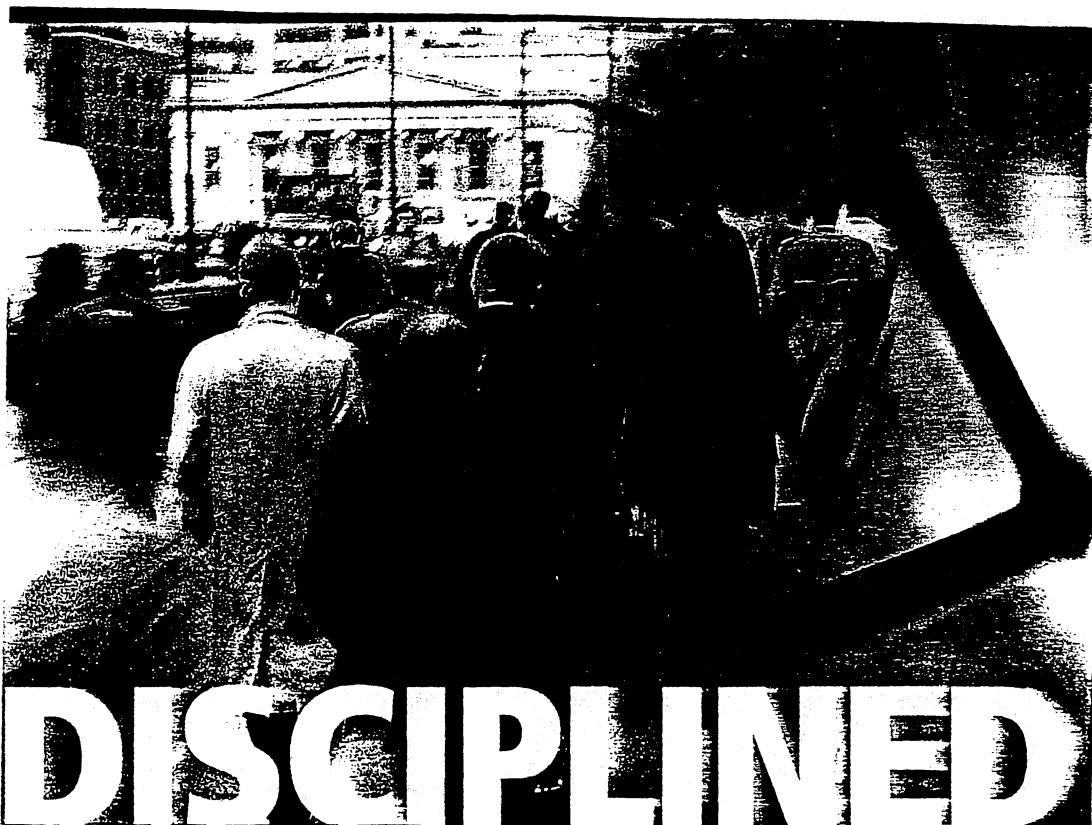
In fact, Mr. Schmidt's book argues that it is impossible to be "fully engaged" in a hierarchical institution, an argument that would hardly strike most people as new or shocking. The strength of the book, according to its supporters, lies in its humor and its detailed examination of the particularities of professional life.

"A witty, incisive, original analysis of the politics of professionalism," wrote **Michael Bérubé**, an English professor at the University of Illinois at Urbana-Champaign, in a jacket blurb. "Finally, a book that tells it like it is," wrote **Stanley Aronowitz**, a sociologist at the City University of New York.

Or now, for Mr. Schmidt, how it was.

—JEFF SHARLET

S 001435



DISCIPLINED MINDS

A CRITICAL
LOOK AT
SALARIED
PROFESSIONALS
AND THE
SOUL-BATTERING
SYSTEM THAT
SHAPES THEIR
LIVES

S 001436

JEFF SCHMIDT

Also included:
pages
1-7, 104-111.

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For my daughter,
Joshua Rose

S 001437



Wayne K. Curry
County Executive

THE PRINCE GEORGE'S COUNTY GOVERNMENT

HUMAN RELATIONS COMMISSION



Jeff Schmidt
3003 Van Ness Street, N. W.
Washington, D.C. 20008

Complainant

vs.

HRC Case No.: rf00-1135
EEOC Case No.: 12HA10020

American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Respondent

DETERMINATION

Under the authority vested in me by Division 12, Subdivision VII, Section 2-222, Prince George's County Code, 1995 edition, as amended, I issue the following determination as to the merits of the subject charge.

The Respondent is an employer within the meaning of Section 2-186(5) Division 12, Subtitle I, Prince George's County Code, 1995 edition, as amended and the timeliness and all other jurisdictional requirements have been met.

FACTS AND CONCLUSIONS

Complainant alleges that Respondent retaliated against him in the termination of his employment on May 31, 2000.

Respondent denies Complainant's allegation.

Respondent is a not-for-profit membership corporation that promotes the advancement of knowledge of physics and is located in College Park, Maryland. Respondent hired Complainant initially as an Associate Editor, then as a Senior Associate Editor.

Complainant alleges that on or about August 17, 1999, he made an internal Title VII based complaint to his Supervisors that the Respondent was not following its Affirmative

1400 McCormick Drive, Suite 245
Largo, Maryland 20774

S 001438

(301) 883-6170 TDD (301) 925-5167 FAX (301) 883-2649

Letter of Determination
Jeff Schmidt
HRC No.: rf00-1135
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Action Program in the hiring and promotion of employees (Black) in professional positions. Complainant alleges that after he made his internal Title VII based complaint on August 17, 1999, he was given a negative Performance Review. Complainant alleges that on May 31, 2000, he was accused of writing a book on company time that he alleges is not true, and was terminated. Complainant alleges that from January 28, 1998, to May 31, 2000, Respondent banned any private conversations between himself and co-workers (White) because Respondent thought he was organizing to bring about changes in Respondent's policies, including their discriminatory hiring practices.

Respondent denies Complainant's allegations. Respondent proffers that for several years prior to his discharge, Complainant consistently was counseled because he failed or refused to meet Respondent's productivity standards. Respondent proffers that in late May 2000, Respondent learned that Complainant recently published a book announcing that it was written on "stolen time." Respondent proffers that in the book's introduction section, Complainant unequivocally admitted to writing it during work hours. Respondent proffers that in pertinent part, Complainant wrote in the Introduction of his book: "This book is stolen, written in part on stolen time... so I began spending some office time on my own work...." Respondent proffers that after Complainant admittedly used Respondent's time to write the book, rather than strive to meet Respondent's productivity standards, his employment was terminated.

Respondent acknowledges that in 1997 Complainant alleged that Respondent failed to make efforts to recruit minority professionals for a particular Physics Today (PT) Associate Editor position. Respondent proffers that its Executive Director/CEO investigated Complainant's allegations and found them to be baseless. Respondent proffers that its Executive Director/CEO met with Complainant several times in 1998, to relay the findings of his investigation.

Respondent proffers that Complainant's negative performance evaluation and subsequent discharge was not based on his filing an internal Title VII based complaint. Respondent proffers that for several years prior to his discharge, Complainant failed or refused to meet Respondent's productivity goals, and was resistant, at times, to assuming responsibility for articles prior to the "ready to edit" stage. Respondent proffers that it never banned Complainant from having private conversations with his co-workers. Respondent proffers that after Complainant made his internal Title VII based complaint, Respondent afforded Complainant favorable treatment by allowing Complainant to take a six month sabbatical in 1998-1999, and by allowing Complainant to change his employment status from full-time to part-time.

The focus of the Commission's investigation centers on Complainant's allegation that Respondent retaliated against him when he was banned from talking to his co-employees

Letter of Determination
Jeff Schmidt
HRC No.: rf00-1135
Page 3

(White), given a negative performance evaluation, and terminated his employment on May 31, 2000.

The first focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complainant he was given a negative performance evaluation.

A review was conducted of Complainant's personnel file. The review reveals a performance review dated February 15, 1995 for the period February 1994-January 1995. The performance review reveals an overall rating of 3.0. The performance review reveals that Complainant is capable of editing 16 articles a year, and he "did not meet this goal in 1994." The performance review states that Complainant's "productivity on his main function of editing feature articles is below capacity. With the magazine's call for more but shorter articles, [Complainant] must aim to edit a minimum of 16 articles published April 1995 to March 1996." The performance review reveals that it was signed by Complainant on February 16, 1995.

A review was conducted of Complainant's performance review dated February 13, 1997 for the period February 1996-January 1997. The performance review reveals an overall rating of 4.0. The performance review reveals Complainant was "one shy of his agreed upon goal of 16. The performance review states that Complainant "needs to increase his article output in 1997 to at least 16, and preferably 18." The performance review reveals that Complainant signed it on February 13, 1997.

A review was conducted of Complainant's performance review dated March 12, 1998 for the period February 1997-January 1998. The performance review reveals an overall rating of 3.0. The performance review reveals Complainant's "articles are generally on time and are often early. For this review period, he was asked to produce 16-18 articles. Seven months into this review period, we made an adjustment (reflected in the above weight) because of his imminent fatherhood that effectively reduced his production minimum from 16 to 15, and he met this revised goal." The performance review states "over the last few years, 'Physics Today' has been undergoing a number of changes-including raising levels of productivity, editorial quality and graphic design. [Complaint] is very capable of meeting these new demands. At the request of the Editor, [Complainant] did begin to handle his own correspondence with authors, as is done by all other articles editors. He has not yet begun to do his own keyboarding or editorial changes, as is done by all other articles editors."

The performance review reveals that "in the next review period, [Complainant] is expected to produce 18 high-quality articles, editing and rewriting text as needed, handling his own correspondence and doing all of his own keyboarding. The articles

must be consistent with the magazine's standards of accuracy, readability, brevity, and visual appeal." The performance review reveals that Complainant did not sign the review.

A review was conducted of a memorandum dated October 1, 1998, from Complainant's Supervisor to Complainant. The memorandum reveals that the subject of the memorandum was performance, expectations, and sabbatical. The memorandum states "to avoid misunderstandings, recall my expectations for your performance: A minimum of 18 completed, high-quality articles per year; consistently constructive, helpful, collegial behavior supportive of the overall editorial effort of the magazine." The

memorandum states "you have asked for a six-month sabbatical and we would like to accommodate your request. Until a means of covering your workload is found, however, I expect you to continue working to meet your performance goals. Upon returning from a sabbatical, my expectations for you will remain the same." The memorandum reveals Complainant received the memorandum.

A review was conducted of a performance review dated August 13, 1999, for the period February 1998-August 1999 (PT issues March '98-Sep. '99)-incl. 6-mo. Sabbatical. The performance review reveals an overall rating of 2.8 that was changed on August 20, 1999 to 3.0. The performance review states Complainant "was asked to produce 18 high-quality articles, and he actually produced 13.5, which is unacceptable. The performance review states Complainant repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of Physics Today. Such behavior is unacceptable." The performance review states the following as examples of Complainant's unacceptable behavior. Complainant was removed from working on the PT anniversary issue, and produced a very unbalanced set of decadal excerpts strongly centered on political issues, whereas Complainant had been directed to focus on physics excerpts. Complainant wrote a 19 page response to his last performance review with another 38 pages of addenda (as he is entitled to do), and circulated it to PT staff members. The performance review reveals that Complainant signed the review on August 19, 1999.

A review was conducted of a memorandum dated August 19, 1999, from Complainant to his Supervisor. The memorandum reveals as its subject "My 1999 performance review (dated 13 August 1999 and signed by you on 17 August 1999)." The memorandum states "I was disappointed to find that you wrote my 1999 performance review in the same punitive spirit as my 1998 review. Like my 1998 review, the present review understates or completely leaves out my accomplishments and does not mention the praise that I have received for my work. At the same time, it contrives deficiencies and plays them up. I had thought you had gotten beyond that."

Investigation disclosed that Complainant's overall performance rating for the period February 1997-January 1998, after he filed his internal Title VII based complaint was the same as his rating for the period February 1994-January 1995. Investigation disclosed that Respondent has raised concerns regarding Complainant's productivity since before Complainant filed his internal Title VII based complaint.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations.

The second focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complaint he was banned from having private conversations with co-workers (White).

A review was conducted of a memorandum dated September 26, 1997, from Respondent to Complainant. The memorandum states "We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated."

An interview was conducted with an Editorial Assistant. This witness stated that she has been employed with Respondent and remembers Complainant but knows nothing about the circumstances surrounding his departure from Respondent.

An interview was conducted with a former employee. This witness stated that he worked for Respondent from July 1995 to March 2000, and left because he was disgruntled with the way Respondent was being managed. This witness stated that he and Complainant had adjoining offices and worked closely together. This witness stated that Complainant in the fall of 1996 was raising issues with management concerning compliance with Respondent's Affirmative Action Plan. This witness stated that he saw a note given to Complainant that he considered a "gag order." This witness stated that the note told Complainant that his job was at risk, and that he should stop being counter-productive. This witness stated that a co-employee received the same note. This witness did not state that he was adversely affected because of his participation in protected activity. This witness stated that he believes Complainant was affected because he was considered the ring- leader.

An interview was conducted with another former co-employee. This witness stated that she was employed with Respondent from September 1989 to November 1999. This witness stated that Complainant started having trouble when he started questioning

Respondent's adherence to its Affirmative Action Plan. This witness stated that she and other employees participated in questioning Respondent's adherence to its Affirmative Action Plan. This witness stated that she saw a note given to Complainant and another co-employee that she considered a "gag order" that stated they were not to say anything that was counter productive.

This witness stated that over the years her ideas got dismissed, but as she became more assertive she got more respect. This witness stated that in 1995, she was receiving less pay than Editors (Non-Asian American). This witness stated that she complained that she was being paid less because she was the only Asian American, and immediately received a promotion and pay raise.

This witness stated she was not adversely affected for her participation in protected activity. This witness stated that she believes that she was not adversely affected because she was less assertive than Complainant.

An interview was conducted with another former co-employee. This witness is the co-employee cited above as receiving the "Gag Order." This witness stated that he was employed with Respondent from 1991 to May 1998. This witness stated that he resigned his position with Respondent because he was unhappy about how poorly things were managed. This witness stated that Respondent's parent company did not adequately support it financially. This witness stated that sometime in 1997, Respondent's CEO held a meeting during which he raised issues regarding lack of financial support, lack of equipment, and poor management. This witness stated that the CEO became very annoyed. This witness stated that after the meeting, Respondent's Publisher pulled him aside and told him not to criticize upper management in public, and that issues like those he raised could only be raised in private. This witness stated that the same thing was imposed on Complainant. This witness stated that Complainant could only raise things related to articles, and nothing related to the work place, how the place was run, or about the culture of the place.

This witness stated that Complainant wanted the work place to operate in more of a collective fashion instead of receiving orders from management. This witness stated that at one time Complainant raised issues of affirmative action (minorities under represented). This witness stated that he was not involved in the affirmative action issues raised by Complainant.

This witness stated that once at a company retreat, Complainant was yelled at to be quiet. This witness stated that as a result of the issues that he did raise, he was treated more harshly. This witness stated that meetings he participated in became more acrimonious. This witness stated that in some respects he was treated the same way.

This witness stated that a group of them were regarded as troublemakers and agitators. This witness stated that part of his duties were management, so sometimes he was looked at as being outside the group and treated better. This witness stated that when he was seen as being inside the group he was treated more harshly.

This witness stated that the reason for Complainant's termination was bogus. This witness stated that Complainant was either terminated because management did not like the language in the book, or because management calculated to get rid of a thorn in their side (Complainant raised affirmative action issues and pushed for collective management).

A review was conducted of the memorandum dated September 26, 1997, from Respondent to Complainant. The memorandum states the following:

"We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated."

The memorandum reveals that Complainant was not banned from having private conversations with co-workers.

Investigation disclosed that some of Complainant's co-workers participated in protected activity along with Complainant, but were not adversely affected.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations that he was banned from having private conversations after filing an internal Title VII based complaint.

The third focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complaint he was terminated.

Investigation disclosed that Respondent has an Equal Opportunity in Employment Policy that states Respondent will not discriminate on the basis of any protected characteristic.

Investigation disclosed that Respondent has a General Rules of Conduct Policy. The Policy states that all employees are employed at-will and can be terminated with or without cause and with or without notice. The Policy reveals the following conduct is included but not limited to the unauthorized behavior that is subject to discipline up to

and including discipline: misuse of confidential information, falsifying records, illegal conduct, and solicitation of any kind by an employee of another employee while either is on working time.

A review was conducted of Complainant's personnel file. The review did not reveal written termination notice. The review did not reveal any written Title VII based complaints.

A review was conducted of a letter dated November 5, 1997, to Respondent's CEO from Complainant. The letter reveals Complainant made an internal Title VII based complaint. The letter reveals Complainant and other staff members at a staff meeting in November 1996 raised Title VII based concerns.

A review was conducted of the Introduction to the cited book Complainant wrote. The introduction states "this book is stolen. Written in part on stolen time, that is, I felt I had no choice but to do it that way."

An interview was conducted with a former employee. This witness stated that he held the position of Associate Editor, and his primary function was writing news articles. This witness stated that he did free lance work with Respondent's formal permission. This

witness stated that because he did not have a 9-5 job, there was no real distinction between when he was working on company time or his own time.

An interview was conducted with another former employee. This witness stated that he held the position of Associate Editor, he did free lance work. This witness stated that he never wrote his free lance articles on company time, he only wrote them home at night.

Interviews were conducted with seven similarly situated employees (5 current employees, 2 former employees). Six of the employees stated that they had not written books or periodicals on company time. One of the employees stated that in order to free lance an employee must get clearance from Respondent, and must free lance on their own time. This employee stated that any work done for an outside publication on company time is considered unethical in this business. Two witnesses stated that they know of employees who have written books or periodicals on company time, but they do not know if Respondent was aware of same. One witness stated that he has a colleague currently writing a book, but his colleague changed his work schedule to a three-day shift to have time to write. This witness stated that employees wrote free lance articles, but on their time. One witness stated that he did outside work, but not on company time.

The Commission in a Title VII Retaliation complaint under Sec. 704(a) must establish that the charging party either opposed an unlawful practice or participated in the

investigation of same. The Commission must establish that the Respondent had knowledge that the charging party engaged in the protected activity (this burden was satisfied, Complainant filed an internal Title VII based complaint on 11-5-97). Second, there must have been an adverse action taken against the charging party in close proximity to the time the charging party engaged in the protected activity (this burden was satisfied-Complainant was terminated 5/31/00). Finally, there must be proof of a causal connection between the protected activity (filed complaint) and the adverse employment action (Complainant's termination on 5/31/00) taken against the charging party (this burden was not satisfied).

In order to establish unlawful retaliation, there must be proof that the Respondent took an adverse action because the charging party engaged in protected activity. Proof of this retaliatory motive can be through direct or circumstantial evidence. A violation is established if there is circumstantial evidence raising an inference of retaliation and if the Respondent fails to produce evidence of a legitimate, non-retaliatory reason for the challenged action, or if the reason advanced by the Respondent is a pretext to hide the retaliatory motive.

An initial inference of retaliation arises where there is proof that the protected activity and the adverse action were related. Typically, the link is demonstrated by evidence that: (1) the adverse action occurred shortly after the protected activity, and (2) the person who undertook the adverse action was aware of the Complainant's protected activity before taking the action. An inference of retaliation may arise even if the time period between the protected activity and the adverse action was long, if there is other evidence that raises an inference of retaliation.

Even if the Respondent produces evidence of a legitimate, nondiscriminatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide the true retaliatory motive. Typically, pretext is proved through evidence that the Respondent treated the Complainant differently from similarly situated employees or that the Respondent's explanation for the adverse action is not believable. Pretext can also be shown if the Respondent subjected the Complainant's work performance to heightened scrutiny after he engaged in the protected activity.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations that he was terminated because he filed a Title VII based complaint.

Based on overall evidentiary findings, there is insufficient evidence to support Complainant's allegations that Respondent retaliated against him in the terms, conditions (performance reviews), privileges (private conversations with co-workers), and termination of his employment on May 31, 2001.

Letter of Determination
Jeff Schmidt
HRC No.: rf00-1135
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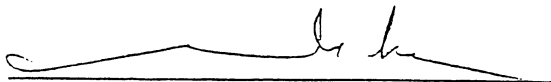
This Determination concludes the staff's processing of the subject charge.

Should Complainant have additional information which Complainant feels may substantially alter my decision in this matter, Complainant may write to me within thirty (30) days from the date of this letter and request that this case be re-opened, providing such information or evidence.

Should the Complainant feel dissatisfied with this decision and have no additional information or evidence to offer, Complainant may in accordance with the Rules of Procedure governing the Prince George's County Human Relations Commission appeal the decision of the Executive Director, within thirty (30) days from the date of this letter by setting forth reasons for said appeal in a written request to:

Samuel N. Fontaine
Chairperson
Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774

This decision constitutes a final action by this Commission concerning your complaint if no appeal is received within thirty (30) days of this date.



William A. Welch, Sr., Ed.D.
Executive Director
Prince George's County
Human Relations Commission

6/13/02
Date

Cc: Complainant

S 001447

14 January 2002
541 signers

Marc H. Brodsky
Executive Director and CEO
American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Dear Dr. Brodsky:

As physicists and other scientists concerned about freedom of expression in the science community, we were troubled to learn of your dismissal of Jeff Schmidt, who had been an articles editor at *Physics Today* magazine for over 19 years.

As we understand it, you fired Jeff after you saw his book, *Disciplined Minds*, and in particular after you learned that Jeff had used some of his spare time at the office for critical writing about education and employment in physics and other fields.

While we do not necessarily agree with Jeff's views about the situation of physicists and other salaried professionals, and do not expect you to, we believe that free debate within the physics community is healthy. We expect you to encourage it, not stifle it, especially because physicists are known for speaking out when physicists internationally are punished for expressing their views. Your actions as head of the American Institute of Physics help to shape society's view of the physics community. We urge you to reconsider your decision, and offer to reinstate Jeff as an editor at *Physics Today*.

We ask that you publish this letter in *Physics Today*, to bring our concerns to the attention of the wider physics community.

Sincerely,

(This letter expresses the views of the undersigned;
affiliations are listed for identification only.)

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**C. Eduardo Siqueira, MD, Sc.D.
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**Philip B. Smith
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**Jeff Smithpeters
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S 001502

Baton Rouge, Louisiana

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**Dr. Scott C. Smith
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Moorestown, New Jersey**

**George Snedeker
Sociology Department
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**Professor R. F. Snider
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**Dr. Fernando de Jesus Salcines Soler
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S 001503

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Oak Ridge National Laboratory
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Robert Spero
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Jet Propulsion Laboratory
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Dr. David A. Sprintzen
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Co-Director of the Institute for Sustainable Development
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S 001504

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S 001505

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S 001506

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S 001507

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Professor J. P. Toennies
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David Tomanek
Professor of Physics
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Michigan State University
East Lansing, Michigan

Hugh Tornabene
Professor and Physics Coordinator
Bowie State University
Bowie, Maryland

Massimiliano Colarieti Tosti
Department of Physics
University of Uppsala
Uppsala, Sweden

Andre-Marie Tremblay
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Electroniques de Materiaux Avances
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Universite de Sherbrooke
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Victor Tribaldos
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S 001508

CIEMAT
Madrid, Spain

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Physics and Chemistry of Solids
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S 001509

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S 001510

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Carl Vuosalo
Physics Graduate Student
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Yasushi Wada
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Suwen Wang
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S 001511

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Professor Norman L. Whitley
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University of New Orleans
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Donald A. Wiegand
Armament Research, Development, and Engineering Center
Picatinny Arsenal
Picatinny Arsenal, New Jersey

Gerald Wilemski
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University of Missouri - Rolla
Rolla, Missouri

Ron Willig
Principal Engineer
Charles Stark Draper Laboratory
Cambridge, Massachusetts

Dr. Robert D. Willis
ManTech Environmental Technology, Inc.
Research Triangle Park, North Carolina

Dr. Cathy Winkler
Anthropologist

S 001512

Apollo Wong
U.S. Hong Kong Enterprise

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Harry Woodcock
Philadelphia, Pennsylvania

Niekiletta U. Woullard
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S 001513

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Swiss Federal Institute of Technology
Zurich, Switzerland

Marie-Christine Zolcinski-Couet
Senior Principal System Engineer
Goodrich Optical and Space Systems
Danbury, Connecticut

Dr. Marco Zoli
Dipartimento di Fisica
Universita di Camerino
Camerino, Italy

S 001514

For immediate release...

HUNDREDS OF PHYSICISTS AND OTHER SCHOLARS DEMAND REINSTATEMENT OF JOURNALIST FIRED FOR WRITING BOOK

More than 750 scientists and other scholars in a wide range of fields have condemned the American Institute of Physics for firing *Physics Today* magazine staff editor Jeff Schmidt over his book, *Disciplined Minds* (Rowman & Littlefield Publishers). Among the protesters signing letters delivered on 14 January 2002 are two Nobel Prize winning scientists and more than 500 physicists — the largest number of physicists ever to speak out on a freedom-of-expression issue in the United States.

The protesters have written a flurry of letters demanding that the magazine reinstate Schmidt, who was fired after 19 years on the job a few days after officials at *Physics Today* and the American Institute of Physics, which publishes the magazine, saw his book. *Disciplined Minds* is about the politics of professional work, and uses the education and employment of physicists to illustrate its points. The origin of job dissatisfaction, argues Schmidt, is employers' insistence on exclusive control over the political aspects of the work, and the subordination of the vision of those who actually do it.

The details of the case are explained in an appeal to scientists by three professors of physics. (A copy is appended below.) The appeal resulted in a protest letter signed by more than 540 individuals, mainly physicists. About 100 individuals, mainly physicists and former *Physics Today* staff members, drafted other letters blasting the magazine for its repressive behavior and likewise demanding Schmidt's reinstatement. Massachusetts Institute of Technology linguist and social critic Noam Chomsky helped to solicit signatures on another protest letter, which has been signed by about 150 scholars and others at institutions across the country, in a wide variety of fields outside of the sciences.

Ironically, the American Institute of Physics is governed by the American Physical Society and other physics organizations that often speak out publicly when dissident physicists outside the United States are punished for expressing their views.

The protesters include scientists from 34 countries: Argentina, Australia, Austria, Bahrain, Belgium, Brazil, Bulgaria, Canada, Denmark, England, Finland, France, Germany, Greece, India, Israel, Italy, Japan, Mexico, The Netherlands, New Zealand, Peru, Poland, Portugal, Puerto Rico, Russia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United States, Yugoslavia — and, in a turn of the table on free-expression, Cuba.

CONTACT...

Talat Rahman, 785-532-1611, rahman@phys.ksu.edu

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Michael A. Lee, 330-672-2577, mleel@kent.edu

Denis G. Rancourt, 613-562-5800 x6774, dgr@physics.uottawa.ca

Jeff Schmidt, 202-537-3645, jeffschmidt@alumni.uci.edu

Journalists may request the telephone numbers and e-mail addresses of any of the 750 protesters; ask any of the above contacts or send an e-mail message to SpeechRights@aol.com.

THE APPEAL...

Dear fellow scientist,

As you may have heard, *Physics Today* magazine recently gave a very punishing review to a book written by physicist Jeff Schmidt: The magazine fired him.

Jeff was a staff editor at *Physics Today* for 19 years — until his supervisors saw *Disciplined Minds*, a thought-provoking critique of workplace hierarchy and the politically subordinate role of salaried professionals. The book uses physicists and physics graduate school to help illustrate points about professionals and professional training in general.

Within days of learning about his irreverent book, the higher-ups at *Physics Today* dismissed Jeff summarily, apparently using the book as an opportunity to retaliate against him for his workplace activism and to ignore his widely praised work for the magazine. Details of Jeff's firing are given in the statement below by two former *Physics Today* staff members.

Please join us in protesting Jeff's dismissal, by adding your name to the letter below, which we will send to Marc H. Brodsky, Executive Director and CEO of the American Institute of Physics. To add your name to the letter, please send an e-mail message to SpeechRights@aol.com. Include your name and an affiliation, such as your department and institution. Please ask others to add their names, too. You can also write directly to Marc Brodsky, at brodsky@aip.org.

Your support will make a big difference.

Sincerely,

Talat Rahman
Fellow of the American Physical Society
University Distinguished Professor
Department of Physics
Kansas State University

George F. Reiter
Professor of Physics
University of Houston

Michael A. Lee
Professor of Physics
Kent State University

BACKGROUND INFO ABOUT JEFF SCHMIDT AND *DISCIPLINED MINDS*

By Chris Mohr and Marlowe Hood, former *Physics Today* staff members

In *Disciplined Minds*, Jeff Schmidt challenges professionals to view their role in society in a new and unsettling way. He argues that professional work has both technical and political components, and that salaried professionals are expected to be technically creative but politically subordinate. Such subordination does not occur without a fight, the book maintains, and so the workplace becomes a battleground for the very identity of the individual, as does graduate school, where professionals are trained.

Jeff has a PhD in physics from the University of California, Irvine, and he draws many of his examples from the predicament of employed physicists and physics graduate students. (In one chapter, he examines the physics PhD qualifying examination and shows how the ostensibly value-neutral test can identify candidates who will likely have a compliant attitude toward their employers.) His book details the battle one must fight to be an independent thinker and to advance one's own social vision in today's corporate society. It offers practical advice on how to make employment more than an exercise in knowing your place, and how to make graduate school more than an abusive "intellectual bootcamp" that breaks the individual in to playing a conventional role. You can avoid the cynicism and intellectual timidity that afflicts so many professional employees, he says, but doing so is not easy, and he discusses how it can be done.

While at *Physics Today*, Jeff played the most prominent role in staff efforts to improve working conditions, increase staff participation in decision-making, and broaden the range of viewpoints allowed in the magazine. He also led an effort to force *Physics Today* to live up to its advertised claim of being an affirmative-action employer, noting that the magazine was hiring and training only whites as editors, a pattern that eventually left the magazine with an all-white staff of 16 professionals and a non-white secretarial staff of 3.

In firing Jeff, the managers at *Physics Today* cited a statement, at the beginning of *Disciplined Minds*, that he had spent "some office time" writing the book. That constitutes "misconduct," they said. Jeff's colleagues, however, saw this charge more as a pretext to get rid of someone who was persistently pressing for changes in workplace policies. Indeed, the fact that the magazine's managers dismissed Jeff after so many years of service not only without a hearing, but also without asking him a single question about his work on the book, suggests that they were looking for an opportunity to remove him.

By the time *Disciplined Minds* was published, *Physics Today*'s managers had already tried unsuccessfully to silence Jeff with measures just short of dismissal. At one point, for example, they put gag orders on Jeff and another outspoken staff editor, warning that they would be fired if they said anything "counterproductive." These orders were eventually lifted due to pressure from coworkers. *Physics Today* even banned private conversations in the workplace, announcing that all conversations between staff members must be open to monitoring by managers. Jeff was not alone among his colleagues in finding these measures repressive.

The managers at *Physics Today* apparently thought the book would be perceived as so provocative that no one would object if they fired Jeff. They were wrong. Those lodging protests to date include sixteen former *Physics Today* staff members (including us), the National Writers Union, and 160 scholars, writers and educators in a wide range of fields. Even the State of Maryland, after an unemployment benefits hearing, rejected AIP's charge that Jeff's work on the book at the office constituted misconduct, finding that *Physics Today* fired Jeff without evidence that his spare-time writing interfered with his work for the magazine. During the years that Jeff was writing *Disciplined Minds*, *Physics Today* gave him two promotions and 19 salary increases based explicitly on the quantity and quality of his work for the magazine.

Jeff,

We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated.

This notice is to be treated as confidential.

ceh
9/24/97

1 Oct. 97

Hi Jean —

They've put the squelch
on me. Harris and Benka
delivered it in person. — on 1 Oct. 97

J

S 001518

From: Graham Collins
To: JBARKER, CDAY, PELLIOT, SFUNK, apsdpost.GOODWIN, W...
Date: 24 Oct 1997 (Fri) 18:45
Subject: My coming silence

If you notice that I no longer say very much during staff meetings, it is because I have been firmly instructed not to criticise Steve Benka or Charles Harris during staff meetings. I am only permitted to criticise them in private discussions with them.

Since this instruction was conveyed to me because I made a truthful statement of fact at our 11 a.m. meeting on Wednesday (namely, that Charles, Lewis and Megan went to Lane Press, but Elliot, Rita and I did not, and Elliot, Rita and I have the most experience setting equations for PT), I have to interpret "criticise" very broadly. Consequently there will be very little for me to say at meetings.

-- Graham

PS: My absence on Monday will be because I have a vacation day scheduled.

S 001519

From: Graham Collins
To: JBARKER, CDAY, PELLIOT, TFEDER, SFUNK, apsdpost.GO...
Date: 28 Oct 1997 (Tue) 12:38
Subject: My coming silence -Reply

Irwin Goodwin replied to my message "My coming silence" as follows. He has kindly given me permission to distribute his reply to PT staff members. I also append my message, for the benefit of the two staff members who I did not include on my original routing list.

-- Graham

>>> Irwin Goodwin 10/26/97 07:02am >>>
Graham--

Your memo alarms me. I recall hearing your remark, and as lawyers often say, it seemed like eminently fair comment. Editorial meetings or, for that matter, any meetings around the office, will lose their purpose if the ruling you cite is imposed or implemented. Lest it is forgotten, freedom of speech is the cornerstone of journalism.

I understand that a similar muzzle was placed on another member of the staff a few weeks ago.

Have we come to this?

Irwin

<<<<<<

>>> Graham Collins 10/24/97 06:45pm >>>

If you notice that I no longer say very much during staff meetings, it is because I have been firmly instructed not to criticise Steve Benka or Charles Harris during staff meetings. I am only permitted to criticise them in private discussions with them.

Since this instruction was conveyed to me because I made a truthful statement of fact at our 11 a.m. meeting on Wednesday (namely, that Charles, Lewis and Megan went to Lane Press, but Elliot, Rita and I did not, and Elliot, Rita and I have the most experience setting equations for PT), I have to interpret "criticise" very broadly. Consequently there will be very little for me to say at meetings.

-- Graham

PS: My absence on Monday will be because I have a vacation day scheduled.

<<<<<

CC: SBENKA, CHARRIS

S 001520

From: Charles Harris
To: pt
Date: 1 Dec 1997 (Mon) 18:16
Subject: November 1997 Monthly Staff Meeting

This memo summarizes what we discussed at the meeting, with emphasis on the major topics discussed, conclusions reached, and action items agreed upon.

It's an effort to maintain communications and reduce misunderstandings among us, help keep us on track in terms of what we--individually and collectively--say we're going to do, and inform the PTers who weren't at the meeting.

I (or a volunteer) will prepare the same kind of summary memo after each of the subsequent monthly meetings. At the next meeting, let's discuss the usefulness of such memos, and whether this basic form should be modified.

TOPICS DISCUSSED

The principal topic we discussed (as agreed to at the outset) was communications.

Gloria led off the discussion by stating that the staff needs to know what's being planned and done regarding such matters as staffing, budgeting, management policies and plans that affect PT, and the member societies' attitudes toward PT.

Her remarks prompted discussion of the staff's involvement in the planning of the editorial calendar. Some people felt that the editors should be more involved in the process. I said I had no problem with that.

We then turned to the matter of staffing. Points made included the following:

- o PT currently has a tight budget that does not call for either staff expansion or staff reduction.
- o Some relief could be obtained by allocating some of Rita's salary to TIP and advertising (as is already done with mine and Carol's).
- o Rita currently has too much work to do, and needs relief. We briefly discussed ways of providing Rita -- and also Susan and Carol -- with assistance, but no specific decisions were explored.
- o Ray Ladbury will be writing Search stories on a part-time basis and as a part-time employee. His involvement will not increase the number of Search stories we run, in that Barbara and Gloria will be writing fewer Search stories for a while as they concentrate on other things. Nor will Ray's involvement have an impact on our freelance budget.
- o I noted that our current freelance budget is about \$22,000, and we discussed the possibility of using it in part to pay for the services of an outside copyeditor. One suggestion made was to use such a person to relieve Jean of her copyediting duties.

There followed an extended discussion of staff communications, specifically what I should communicate to the staff, when I should do so, and in how much detail. Points made included the following:

- o How much detail? The issue was left unresolved, but one suggestion was that in some cases the staff simply needed to be informed that a matter was under consideration.
- o I said I would provide the staff with more information than I have, but that I would continue to withhold certain confidential materials.
- o It was suggested that PT managers should trust the staff more, as well as provide information sooner and better (as could have been done vis-a-vis the contents of the special issues decided last spring). It was also suggested that the staff can contribute to what PT managers are doing (for example, with regard to the APS task force).
- o I volunteered to do a better job of communicating with the staff, and one of the ways I will do so -- with Carol's help -- is by making more use of our e-mail system. I also invited the staff to follow up with me on specific issues they have raised with me. In addition, I said I would arrange to have e-mail access to PT when I'm off-site (something I don't have now).

o We briefly discussed the "firewall" approach to management, under which managers try to shield staff from higher management.

o In terms of the APS task force to evaluate PT, I said that I have learned who's on the task force and will share that information with the staff. I also noted that my goal is to fend off outside influences on PT and PT editors, and Marc Brodsky supports that position.

o We engaged in an extended, open, and either spirited or acrimonious (take your pick) discussion of the dual issues of free speech and the basic rules of conduct, as well as the related events and difficulties that we have experienced over the past two months. In this case, we did reach agreement: That we will put the past behind us and stop exchanging accusations and counteraccusations; that we will abide by the basic agreement we had reached at our first monthly meeting, on 15 October, regarding rules of conduct, as slightly modified at this meeting (see below); and that this modified code of behavior supersedes all else on this subject that PT managers have communicated, formally and informally, verbally and in writing, to all or some members of the staff. I individually polled all of us present, in person or on the phone (absent were Bert, Irwin, and Steve), and we all agreed to abide by this arrangement. (In addition, I said I would send private memos to Graham and Jeff to rescind earlier directives.)

CONCLUSIONS REACHED

1. I will try to keep the staff better informed, with Carol's assistance, and will use e-mail more as a means of staff-wide communication, along with our regular monthly meetings.
2. Our agreed-upon code of behavior -- for staff and managers alike -- is that all of us will be respectful, tolerant, and courteous in dealing with one another, and that we are free to engage in constructive criticism and discussion without fear of retribution.

ACTION ITEMS

1. I'll communicate better, and also get myself equipped with remote e-mail access.
2. I'll send the staff a memo about the APS task force members.
3. I'll give private memos to Jeff and Graham as promised.
4. We'll all abide by the code of behavior.
5. We'll meet again for our third monthly meeting, on Monday, 15 December, from 10 a.m. to noon.

From: Charles Harris, Steve Benka (Charles Harris) (Charles Harris)
To: JSCHMIDT
Date: 2 Dec 1997 (Tue) 12:30
Subject: rescindment

As agreed in the last staff meeting, our mutual acceptance of a code of behavior supersedes any outstanding verbal or written reprimand to you or any member of the staff for any perceived violation of this code. Onward and upward!

S 001523

Subject: FYI: rescindment**Date:** Wed, 03 Dec 1997 09:48:35 -0500**From:** "Graham P. Collins" <gpc@sff.net>**To:** jak@interport.net, ar429@lafn.org, tfeder@wam.umd.edu, lugenbold@juno.com

FYI, here is how CH & SB rescinded my gag order. It came from CH's account, with the name in the From field changed to include both their names.

>>> Charles Harris, Steve Benka (Charles Harris) 12/02/97 12:27pm >>>

>

>** PRIVATE **

>

>As agreed in the last staff meeting, our mutual acceptance of a code of
>behavior supersedes any outstanding verbal or written reprimand to you
>or any member of the staff for any perceived violation of this code.
>Onward and upward!

About 45 minutes later, I replied with the following (to both CH and SB, including a copy of the above message).

>Thank you.

>

>(The contentious part of the reprimand in question related to a violation of
>a different, previously unstated code, but I'll accept this statement in the
>spirit intended.)

I suspect that they labored mightily over the wording of the rescindment (it did, after all, take them nearly 3 weeks), and yet they got it wrong. I shake my head in dismay.

-- Graham

S 001524

4 February 1998

Hi Graham,

It sounds like you are in a great place, a different world physically and in spirit. News travels far and fast, and so I see that you already know that your coworkers have been treated to a "down under" experience of a very different sort. The description of events that you received was a good one, in my opinion, and shows the skills of a good reporter. I'll give you my report here, because it contains some additional information.

On Thursday 22 January 1998 I met with Charles Harris to ask him to get Stephen Benka off my case. Benka had been pressuring me to stop doing anything that takes up any support staff time at all. I told Harris that support staff can contribute a lot to making the editorial work go well, and that his apparent new policy for support staff work -- that it should give priority to advertising and other revenue-producing work over editorial work -- was bad for the magazine. When Judy was part of the support staff, most of her time was shifted to the Buyers' Guide, which was brought in-house to save money. Now they are shifting more and more of Rita's time to advertising work. And they aren't replacing the lost editorial support. Instead, they are pressuring editorial staff to take on more work. Management philosophy seems to be: Why pay \$15 an hour for clerical work when you can pay \$30? Their real philosophy, of course, is simply to get the editorial staff to do more.

I told Harris that behind all this is the way his salary is structured -- tied to reducing the magazine's budget deficit. To my claim that his salary structure is distorting our priorities, he said that he doesn't always do what is best for his salary. As proof, he pointed out that we usually don't run four feature articles in the magazine. He then quickly changed the subject, realizing, I think, that he has never revealed that his salary is tied to upping our output to four articles per month. By the way, over my objection (and over Bert's indication of support for my objection), they are running four substantial feature articles in the March issue, even though we have no backlog and no additional staff. The other day Harris broke new ground in his privileging of advertising over editorial by bringing his advertising manager to an editorial meeting and letting the needs of advertising set the agenda. They forced the meeting to make a big editorial decision after very little discussion, for the sake of advertising. Warren objected strongly; Gloria called it "bullying."

Harris told me that he is open to hiring more support staff, but that we would have to discuss it first at a staff meeting, possibly the next one. I told him that some of us thought we had already discussed it at length at staff meetings and that the need was clear.

Overall, Harris said that he wasn't inclined to give me much consideration, because of my organizing activity last

S 001525

year. And he mentioned your name here too, Graham, as another unforgivable transgressor. "You tried to get me fired," he said, speaking either about me alone, or about you and me, or about all those involved. I said that isn't true. He said that if I believe that, then I must be very naive. And his attitude indicated that he doesn't think I believe that and that he doesn't want to even consider the possibility that I do. I think he wants to believe that I tried to get him fired, because according to his value system that would give him both the desire and moral right to fire me or drive me out, which now appears to be his agenda.

In pursuit of that agenda, Harris appears to have given Benka license to go after me and maybe all of management's perceived enemies on the staff. Around 6 pm on Wednesday 28 January 1998, I was in my office talking to Toni on the telephone when Benka opened the door and asked rudely and sarcastically if I was talking to one of our authors. I said, "No, I'm talking to a coworker, Toni." He acted as if he already knew that. He stepped further into my office and said that he wanted in on our conversation. I found this shocking, of course, and unprecedented. I switched Toni to the speakerphone and told her that Steve was here and wanted to be in on our conversation. She sounded equally shocked. Benka suggested that she come over to my office, and she said OK. Without saying anything, I walked out of my office and into the open area of desks just outside, and Benka followed. I did this to make room for Toni and to get some physical distance between myself and a former post office employee who was clearly behaving very strangely. Toni arrived quickly.

Benka asked me and Toni what we had been talking about on the telephone. I thought his question was way out of line, but I nevertheless told him: We had been discussing the May 1998 50th anniversary issue of Physics Today. (That is ironic, because every May-issue meeting that Benka has been a part of has been a disaster. Virtually every member of the staff thinks that that issue has been badly mismanaged, and no one thinks that yet another meeting with Benka is the way to generate the ideas that the magazine desperately needs to salvage it.) But after giving that short answer, I said that the important question is why he was trying to barge in on our conversation.

He said that he is forbidding all private conversations between staff members at work. From now on, all conversations between staff members must be open to management supervision, he said. When I asked him why, he referred to the organizing activity that took place last year and said that he doesn't want that to happen again. (He and Harris have no doubt that I played a leading role in that.) This looked like a retaliatory and repressive policy aimed more at me than at the rest of the staff, and so I

asked him whether or not it applies to everyone. He said it does. I didn't believe him (but I didn't say that I didn't believe him), and so I pressed him three or four times to say whether or not he was going to announce the new policy to the rest of the staff. His final statement was that he knows that I want to know that.

Of course, even if the new repressive policy is not formally announced, no one can afford to take a chance on violating it -- especially Toni and me, to whom it was announced formally. (Paul got a semi-formal announcement, as the discussion took place right outside his door, which was open at the time.) News of management's dim view of private conversations has spread throughout the staff by way of -- yes, you guessed it -- private conversations.

Even though Benka's Gestapo-like enforcement of the new policy was very frightening, in the middle of it all Toni managed to point out that we don't have the bi-weekly Q&A meetings anymore. If management wants to know what the staff is concerned about, they can have such meetings rather than monitor our conversations. Benka ignored her. I think Toni's idea is a good one and should be among our arguments and suggestions.

About half an hour before Benka busted up the telephone conversation between Toni and me, he did something that in retrospect was clearly part of the new repression but at the time felt merely strange and creepy. I had stopped by Toni's office to give her a newspaper article that I thought might interest her. It was about the Clinton/Lewinsky affair, which we had discussed earlier in the day. The article was a brief historical survey showing that presidents who cheated on their wives were more likely to lie to the public as well, justifying public interest in this sort of thing. Toni and I discussed the article briefly and then discussed the 50th anniversary issue. During the latter discussion, Benka opened the door to Toni's office, entered the room and asked if he could join in the conversation. This seemed very strange, of course, especially because he did not know what we were talking about. Toni was perfectly polite in spite of Benka's rude entry. She pointed out the article that I had brought by, dutifully restarting our conversation about it from the beginning for Benka. The three of us discussed the issue for a while, during which Toni and I were treated to editor Benka's view that the press should know its place and not try the president. It was an awkward discussion, because I and maybe Toni (she can speak for herself) were not really interested in speaking with Benka. When we finished the discussion, Benka showed no sign of leaving Toni's office. He indicated in a subtle but clear way that he would not leave first. This was not only bizarre, but also had something of an ugly edge to it. Although we had no idea what was going on, Toni and I acted quickly to undo the

situation -- she by immediately announcing that she had work to do, and I by quickly leaving the room. Benka and I then spoke about feature articles for ten minutes or so at his office. That conversation consisted of me detailing for him all the progress I had made on a number of articles. The discussion was pleasant, although not really necessary, and he acted pleased and calm throughout. However, when we finished talking, I walked toward Toni's office, and Benka followed me. He asked if I was going to Toni's office, and I said yes. He asked if he could come along. By that time he had already followed me most of the way to her office. I told him that she and I were in the middle of a conversation that we had started earlier in the day, and that it would take too long to fill him in on all the background. We discussed this briefly, and he finally suggested that neither one of us go to Toni's office. I didn't say anything one way or the other, and he went back to his office. I noticed a box nearby containing copies of the latest issue of the magazine; I took one and went back to my office. Later, when Toni and I spoke on the telephone about the 50th anniversary issue, we began our conversation by trying, without success, to figure out our supervisor's mysterious and disturbing behavior earlier.

S 001528

From: Stephen Benka
To: Jeff Schmidt
Date: 8/19/99 7:09pm
Subject: First thoughts on your response to the review

Jeff,

Because you didn't have time to discuss your response to your review when you gave it to me, here are my initial thoughts on the inaccuracies that you perceive. Let's discuss this further as soon as possible.

Your example #1: You neglected to mention that, initially, you had wanted to count Goldstein as one long article, not two. However, because you had completed Goldstein within the previous review cycle, and because you were two full articles short of your already reduced (because of your cancelled paternity leave) production goal for last year, we counted them as two and included them in that cycle. This ensured that you would receive an "acceptable" rating, which was clearly in your best interest.

Each editor who worked on decadal excerpts for the anniversary issue did the equivalent of one full article's work in his or her decade. There would be no reason to count yours otherwise, except that your work on your decade had to be largely redone by someone else.

As of today, to my knowledge, the Will article is not yet completed. If it were, I would count it as an article completed within this review period.

Your example #2: You are right that I should have discussed the change of weights with you. I apologize for not having done so. Let's discuss and agree on your job description as soon as possible.

Your example #3: My description is accurate.

Your example #4: Your appeal to Charles Harris, Theresa Braun, and James Stith was the proper procedure to follow. However, as we discussed earlier today (and at other times), your surreptitious circulation of your response to the staff was entirely inappropriate.

I still would like you to tell me which member or members of the staff you have discussed this year's review with.

—Steve

S 001529

From: Jeff Schmidt <jeff-schmidt@juno.com>
Received: (from jeff-schmidt@juno.com)
by m4.jersey.juno.com (queuemail) id EJGYUQBF; Fri, 20 Aug 1999 14:04:47 EDT
Return-path: jeff-schmidt@juno.com
To: lugenbold@juno.com, tfeder@wam.umd.edu, jak@interport.net
Cc: jeff-schmidt@juno.com
Date: Fri, 20 Aug 1999 14:04:47 EDT
Subject: Naming names
Message-ID: <19990820.140725.15951.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Juno 1.49

Hi Paul, Toni and Jean,

I just sent the message below to Warren. I don't know if he will get it before Tuesday, when he is next in the office. As you will see, it applies to you, too, but I thought it would be best to keep the message to Warren separate. (Please be careful not to mention his name in the context of this stuff.) Any suggestions or offers?

Jeff

Hi Warren,

My discussion with Steve Benka about my performance review took place yesterday afternoon (Thursday 19 August 1999). It went more or less as expected (he basically didn't budge), except for one thing: He indicated that what he said about me in the review was confidential. At first I took that to mean that the review was confidential like a doctor's report, which goes only to the patient, to protect the patient's privacy. But it quickly became clear that what he meant was that he didn't want me to tell anyone what he said about me in the review -- for his protection, not mine.

I responded by saying that most of the staff doesn't understand "confidential" to mean that they are forbidden to talk about their reviews (it is often necessary to talk about a review to check its accuracy), and I pointed out that they commonly discuss such things with their coworkers. Besides, I said, in this case it's too late, because I have already discussed it with a coworker (more than one, actually), and I didn't ask that person not to discuss it with others. So lots of people could know about it by now (I'm sure they do).

Benka appeared to be genuinely surprised and disturbed that people talk to each other about these things. I told him that I was surprised that he was surprised. I said that lots of people here talk to each other about everything, and that's a good thing -- it's a sign of closeness. He was also disturbed that I had discussed the review with a coworker, and he asked me to tell him who it was. (I won't do that, of course.) I said that I didn't want to get anyone in trouble. He indicated that he still wanted to know. So I offered to ask the person if it would be ok to mention his or her name. At the end of the meeting, Benka said again that he wanted to know who it is. And a few hours later, at the end of a not-very-interesting e-mail message to me about other aspects of the review, he wrote this:

S 001530

>I still would like you to tell me which
>member or members of the staff you have
>discussed this year's review with.

>--Steve

So I am now contacting all the people whom I think know about my review, to get their ideas on what I should tell Benka.

Jeff

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Internet just the way you want it. Free software, free e-mail, and free Internet
access for a month! Try Juno Web: <http://dl.www.juno.com/dynoget/tagj>.

From: Toni Feder <tfeder@wam.umd.edu>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by mx2.jersey.juno.com with SMTP id AAA555HGZAWJHMS
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)

Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])
by mx2.jersey.juno.com with SMTP id AAA555HGZATTN59J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)

Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx5.boston.juno.com with SMTP id AAA555HGZAKSV2Y2
(sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)

Received: from wam.umd.edu (async249-51.async.duke.edu [152.3.249.51])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id OAA02801;
Fri, 20 Aug 1999 14:22:11 -0400 (EDT)

Return-path: <tfeder@wam.umd.edu>

Reply-To: tfeder@wam.umd.edu

To: Jeff Schmidt <jeff-schmidt@juno.com>

Cc: lugenbold@juno.com, jak@interport.net

Date: Fri, 20 Aug 1999 14:25:15 -0400

Subject: Re: Naming names

Message-ID: <37BD9D7F.A57F16F9@wam.umd.edu>

References: <19990820.140725.15951.0.jeff-schmidt@juno.com>

X-Status: Read

X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

Hi Jeff, Jean, Paul,

obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association -- why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people. Also, don't forget, Chas is among those people.

I don't know what you should tell him-- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request? something like that.

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

Toni

From: "Jean A. Kumagai" <jak@interport.net>
Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA555KHS AZ77UWS
for <jeff-schmidt@juno.com> (sender <jak@interport.net>);
Fri, 20 Aug 1999 14:56:48 -0400 (EST)
Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])
by mx2.jersey.juno.com with SMTP id AAA555KHS AXKWHG2
for <jeff-schmidt@juno.com> (sender <jak@interport.net>);
Fri, 20 Aug 1999 14:56:48 -0400 (EST)
Received: from amsterdam.interport.net (amsterdam.interport.net [199.184.165.19])
by mx5.boston.juno.com with SMTP id AAA555KHS APY897A
(sender <jak@interport.net>);
Fri, 20 Aug 1999 14:56:48 -0400 (EST)
Received: from [209.122.227.240] (209-122-225-172.s172.tnt1.nyw.ny.dialup.rcn.com
[209.122.225.172])
by amsterdam.interport.net (8.8.5/8.8.5) with ESMTP id OAA01347;
Fri, 20 Aug 1999 14:56:57 -0400 (EDT)
Return-path: <jak@interport.net>
In-Reply-To: <37BD9D7F.A57F16F9@wam.umd.edu>
To: tfeder@wam.umd.edu, Jeff Schmidt <jeff-schmidt@juno.com>
Cc: lugenbold@juno.com, jak@interport.net
Date: Fri, 20 Aug 1999 14:58:36 -0500
Subject: Re: Naming names
Message-ID: <v03110711b3e35d5dc946@[209.122.227.240]>
References: <19990820.140725.15951.0.jeff-schmidt@juno.com>
X-Status: Read

Hi Jeff (and Toni and Paul),

I don't know what would be the best way to respond to Benka. I personally don't mind if you tell him you talked to me. On the other hand, if you think it would be stronger to say that nobody wanted their name revealed for fear of retribution, then I definitely do not want you to mention my name.

You can also tell Benka that I agree with everything in both of your responses to your performance reviews, that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your distributing your appeal to the staff) will only get worse if he doesn't improve his attitude. You might also add that management's increasingly repressive policies may soon lead to the voluntary departure of one of its best editors. :)

Should I tell anybody else on the staff about your review? It will have to

wait until after I get back from Maine.

Jean

At 2:25 PM -0400 8/20/99, Toni Feder wrote:

>Hi Jeff, Jean, Paul,

>

>obviously I don't think you should tell Steve whom you discussed your review
>with. Since he is so harsh with you, it would only impugn those people by
>association -- why does he want that info? It seems he would use (or at least
>hold) it against us. So I absolutely don't want him to know I am among those
>people. Also, don't forget, Chas is among those people.

>

>I don't know what you should tell him-- just that the person/people involved
>felt that it would be used against them? Or more simply, they felt
>uncomfortable with that request? something like that.

>

>

>Maybe you could say something like, "The conversations I had with (some of) my
>coworkers were private, and they feel it would be an invasion of their privacy
>for me to reveal their names just because they talked with me. I'm sorry I
>can't reveal anyone's name."

>

>You could add something reassuring, if you can think of anything. Something to
>let him know you are not planning or inciting a rebellion among the staff....

>

>Toni

From: Warren Kornberg
To: Jeff Schmidt
Date: 8/20/99 8:11pm
Subject: Re: Naming names

Jeff:

1--e-mail is not confidential, and if you want to be sure, it should not be used for things (like naming names) you do not want discussed.

2--I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business. If you want to tell him you talked to me, that, too, is your business; I don't really care. But as you spell it out, the demand seems high-handed.

3--As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

w

>>> Jeff Schmidt 08/20/99 01:42PM >>>
Hi Warren,

My discussion with Steve Benka about my performance review took place yesterday afternoon (Thursday 19 August 1999). It went more or less as expected (he basically didn't budge), except for one thing: He indicated that what he said about me in the review was confidential. At first I took that to mean that the review was confidential like a doctor's report, which goes only to the patient, to protect the patient's privacy. But it quickly became clear that what he meant was that he didn't want me to tell anyone what he said about me in the review--for his protection, not mine.

I responded by saying that most of the staff doesn't understand confidential to mean that they are forbidden to talk about their reviews (it is often necessary to talk about a review to check its accuracy), and I pointed out that they commonly discuss such things with their coworkers. Besides, I said, in this case it's too late, because I have already discussed it with a coworker (more than one, actually), and I didn't ask that person not to discuss it with others. So lots of people could know about it by now (I'm sure they do).

Benka appeared to be genuinely surprised and disturbed that people talk to each other about these things. I told him that I was surprised that he was surprised. I said that lots of people here talk to each other about everything, and that's a good thing--it's a sign of closeness. He was also disturbed that I had discussed the review with a coworker, and he asked me to tell him who it was. (I won't do that, of course.) I said that I didn't want to get anyone in trouble. He indicated that he still wanted to know. So I offered to ask the person if it would be ok to mention his or her name. At the end of the meeting, Benka said again that he wanted to know who it is. And a few hours later, at the end of a not-very-interesting e-mail message to me about other aspects of the review, he wrote this:

>I still would like you to tell me which
>member or members of the staff you have
>discussed this year's review with.

>--Steve

S 001535

So I am now contacting all the people whom I think know about my review, to get their ideas on what I should tell Benka.

Jeff

PS – Careful with those computer buttons! I just noticed that your brief e-mail message to me yesterday morning also went out to Jeff Bebee, Georgina Guagenti and advtsg. No harm done.

S 001536

From: Paul J Elliott <lugenbold@juno.com>
Received: from mx1.jersey.juno.com (mx1.jersey.juno.com [209.67.33.54])
by m4.jersey.juno.com with SMTP id AAA56BC8WANXWDKA
for <jeff-schmidt@juno.com> (sender <lugenbold@juno.com>);
Sun, 22 Aug 1999 19:46:28 -0400 (EST)
Received: from m6.boston.juno.com (m6.boston.juno.com [205.231.101.197])
by mx1.jersey.juno.com with SMTP id AAA56BC8WAJ6CKW2
for <jeff-schmidt@juno.com> (sender <lugenbold@juno.com>);
Sun, 22 Aug 1999 19:46:28 -0400 (EST)
Received: (from lugenbold@juno.com)
by m6.boston.juno.com (queuemail) id EJNQ7AHQ; Sun, 22 Aug 1999 19:46:11 EDT
Return-path: <lugenbold@juno.com>
To: jeff-schmidt@juno.com
Cc: tfeder@wam.umd.edu, jak@interport.net
Date: Sun, 22 Aug 1999 19:46:11 EDT
Subject: Re: Naming names
Message-ID: <19990822.202344.4631.0.Lugenbold@juno.com>
References: <19990821.120842.14367.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Juno 1.49

Jeef (Jean, Toni too):

I think Warren is correct, but I further recommend that you tell Benka nothing other than that, having discussed the matter further with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had with AIP employees, non-AIP journalists, or outside lawyers.

And tell him so in writing, on the chance that you can develop a Benka-incriminating paper/electron trail.

To that end, I also recommend that you consider preceding that memo with one of inquiry, asking him to tell you why he wants you to name names, and what he intends to do once he knows those names.

However, If you have no stomach for ensnaring him, then I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

Paul

On Sat, 21 Aug 1999 12:06:03 EDT Jeff Schmidt <jeff-schmidt@juno.com> writes:

>Hi Toni, Paul and Jean,

>

>Here's some stuff from and to Warren, relevant to all. Paul, do you

>want to comment on Benka's request that I name names?

>

>Jeff

>

>-----

S 001537

>

>Jeff:

>--I don't think there is any reason you should be required to disclose
>conversations you might or might not have had with other people in the
>building. With whom you discuss your business is your business. If
>you want to tell him you talked to me, that, too, is your business; I
>don't really care. But as you spell it out, the demand seems high-handed.

>

>--As far as the review's confidentiality is concerned, I believe that it is, but
as a restriction on the management, not on you.

>w

>

>_____

>

>Hi Warren,

>

> Thank you for basing your response to Benka's demand on principle, rather
than on fear.

>

> I am still thinking about what to tell him, but I am leaning very strongly
toward not giving him any names, even though you and some others have given me
permission to do so. I don't want to give the appearance of finding a
totalitarian request acceptable.

>

> One thing I am thinking about doing is simply quoting people's responses
(yours and about three others), leaving out their names and anything else that
might identify them, and also leaving out the sentences where they give me
permission to mention their names.

>

> If Benka wants to know more, he can ask individual staff members whether or
not I discussed my review with them. One useful response might be to simply tell
him the truth -- that I said that I was trying to determine whether or not the
review was accurate, and so we went over the review and compared it to the facts
as we remembered them. And, of course, let him know the outcome. Another
response might be to refuse to report on private conversations but to say that
someone did show you the review and that you are willing to discuss its
>accuracy. Whatever; I'm not worried; Benka doesn't present much of an
>intellectual challenge in these or other matters.

>

>Jeff

>

>

>

>

>

>

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>and free Internet access for a month! Try Juno Web:
><http://dl.www.juno.com/dynoget/tagj>.

Get the

Internet just the way you want it. Free software, free e-mail, and free Internet
access for a month! Try Juno Web: <http://dl.www.juno.com/dynoget/tagj>.

From: Jeff Schmidt <jeff-schmidt@juno.com>
Received: (from jeff-schmidt@juno.com)
by m4.jersey.juno.com (queuemail) id EJPQWQT4; Mon, 23 Aug 1999 05:00:46 EDT
Return-path: jeff-schmidt@juno.com
To: jak@interport.net, lugenbold@juno.com, tfeder@wam.umd.edu
Cc: jeff-schmidt@juno.com
Date: Mon, 23 Aug 1999 05:00:46 EDT
Subject: Naming names
Message-ID: <19990823.050304.14375.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Juno 1.49

Dear four colleagues who saw my annual review and who Benka wants me to name,

Taking everyone's suggestions into account, my current thinking is to not give Benka any names and to not give him anything in writing. I would give him a verbal report that would include the four responses (below) to his demand. Even though I have removed your name, I won't include your response in my oral report without your approval. So please find it below and let me know if it is ok; modify it if necessary.

As one of you suggested (and as I had decided, too), I would first ask Benka why he wants the names. To him, I think, the problem isn't the out-to-get-you review; it's the fact that I disclosed it and criticized it. If he comes around asking, "Did Jeff talk to you about his performance review?", feel free to say "yes" or "I don't feel comfortable reporting on private conversations" or "I don't feel comfortable reporting on private conversations, but I am familiar with the review and can talk about that." I'd probably be better off if you didn't say who showed you the review, and if you didn't say that you saw any written response to it.

My spoken report to Benka would be something like this:

Following up on your request, I was able to track down four colleagues who saw my annual review either because I showed it to them or because someone else did. They all reacted negatively to your request for their names, so I'm afraid I don't have any names to report. The most I can do is tell you what they told me when I asked for permission to identify them. Would that be of any use to you? [At this point Benka says yes and I read the following responses.]

1. Obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association — why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people.

I don't know what you should tell him — just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request?

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy

for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

2. I don't know what would be the best way to respond to Benka. There is fear of retribution.

You can tell him that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your appeal becoming known last year) will only get worse if he doesn't improve his attitude. Management's increasingly repressive policies will inevitably have negative consequences.

3. I recommend that you tell Benka nothing other than that, having discussed the matter with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had.

I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

4. I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business....the demand seems high-handed.

As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

Jeff

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From: Toni Feder <tfeder@wam.umd.edu>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by mx2.jersey.juno.com with SMTP id AAA56D8F5AHQ398J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:23 -0400 (EST)

Received: from mx2.boston.juno.com (mx2.boston.juno.com [205.231.100.52])
by mx2.jersey.juno.com with SMTP id AAA56D8F5AEVZ78J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:23 -0400 (EST)

Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx2.boston.juno.com with SMTP id AAA56D8F4A5JXAU2
(sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:22 -0400 (EST)

Received: from wam.umd.edu (async249-13.async.duke.edu [152.3.249.13])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id VAA01658;
Mon, 23 Aug 1999 21:43:16 -0400 (EDT)

Return-path: <tfeder@wam.umd.edu>

Reply-To: tfeder@wam.umd.edu

To: Jeff Schmidt <jeff-schmidt@juno.com>

Cc: jak@interport.net, lugenbold@juno.com

Date: Mon, 23 Aug 1999 21:47:11 -0400

Subject: Re: Naming names

Message-ID: <37C1F95A.E7D97018@wam.umd.edu>

References: <19990823.050304.14375.0.jeff-schmidt@juno.com>

X-Status: Replied

X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

***** Please do not quote from the new content of this note. Some are
embedded in your text. *****

Hi Jeff,

I would feel more comfortable -- and think it would be a better strategy -- if you would summarize what your colleagues' reactions were to the request that you identify them, rather than read (as you say you would do after he says "yes" he'd like to know their reasons), or even repeat to him modified-verbatim what we each said. Reading identity-edited-out comments is theatrical. I think his request should be played down, not up, and nipped in the bud. I would prefer that (if anything at all) you say each idea once, in your own words, rather than in ours. For example, there is considerable overlap, in particular in the comments by me, Warren and Paul, so I suggest summing these up. Giving him three versions is an invitation for him to continue playing this stupid game of trying to identify your colleagues. In my view, the point to make is simple: it's none of his business. Jean made some different comments, and those may be worth including in whatever you say. (It would be fine with me if you noted that more than one colleague commented that they think of you as a very valuable colleague, and value your contributions to the magazine.) But I prefer the simpler, less theatrical tack of paraphrasing and summing up, rather than "handing him our words."

In that vein, my preference would be that you still ask him (if you want to) why he wants to identify the colleagues who know about your review, and then say (something like) they (and I) all feel that it's not appropriate to have to report on private conversations. One person noted that confidentiality is a restriction on management, not on employees.

S 001541

end of investigation, let's hope.

— Toni

Subject: Naming names Date: Mon, 23 Aug 1999 05:00:46 EDT From: Jeff Schmidt
<jeff-schmidt@juno.com> To: jak@interport.net, lugenbold@juno.com,
tfeder@wam.umd.edu CC: jeff-schmidt@juno.com

Dear four colleagues who saw my annual review and who Benka wants me to name,

Taking everyone's suggestions into account, my current thinking is to not give Benka any names and to not give him anything in writing. I would give him a verbal report that would include the four responses (below) to his demand. Even though I have removed your name, I won't include your response in my oral report without your approval. So please find it below and let me know if it is ok; modify it if necessary.

As one of you suggested (and as I had decided, too), I would first ask Benka why he wants the names. To him, I think, the problem isn't the out-to-get-you review; it's the fact that I disclosed it and criticized it. [JEFF: SO WHAT DO YOU THINK HIS MOTIVE IS, IF NOT TO SOMEHOW HOLD IT AGAINST YOUR COLLEAGUE-CONFIDANTS?] If he comes around asking, "Did Jeff talk to you about his performance review?", feel free to say "yes" or "I don't feel comfortable reporting on private conversations" or "I don't feel comfortable reporting on private conversations, but I am familiar with the review and can talk about that." I'd probably be better off if you didn't say who showed you the review, and if you didn't say that you saw any written response to it. [IF HE ASKS ME, I PLAN TO SAY I THINK IT'S NONE OF HIS BUSINESS. BUT I DON'T SEE ANYWAY OF HOLDING THAT PARTICULAR DISCUSSION, AND I HOPE HE DOESN'T ASK]

My spoken report to Benka would be something like this:

Following up on your request, I was able to track down four colleagues who saw my annual review either because I showed it to them or because someone else did. They all reacted negatively to your request for their names, so I'm afraid I don't have any names to report. The most I can do is tell you what they told me when I asked for permission to identify them. Would that be of any use to you? [At this point Benka says yes and I read the following responses.]

[AS I WROTE ABOVE, I PREFER YOU PARAPHRASE, RATHER THAN READ MY RESPONSE]

1. Obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association — why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people.

I don't know what you should tell him — just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request?

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy

S 001542

for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

2. I don't know what would be the best way to respond to Benka. There is fear of retribution.

You can tell him that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your appeal becoming known last year) will only get worse if he doesn't improve his attitude. Management's increasingly repressive policies will inevitably have negative consequences.

3. I recommend that you tell Benka nothing other than that, having discussed the matter with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had.

I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

4. I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business....the demand seems high-handed.

[I DO THINK IT'S A GOOD IDEA TO MENTION THE FOLLOWING COMMENT BY WARREN]
As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

Jeff

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<http://dl.www.juno.com/dynoget/tagj>.

From: Toni Feder <tfeder@wam.umd.edu>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA56EBYDAWVD5QS
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 22:43:15 -0400 (EST)

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by mx2.jersey.juno.com with SMTP id AAA56EBYDAUBEXCJ
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 22:43:15 -0400 (EST)

Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx5.boston.juno.com with SMTP id AAA56EBYDAMGG9P2
(sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 22:43:15 -0400 (EST)

Received: from wam.umd.edu (async249-8.async.duke.edu [152.3.249.8])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id WAA02639;
Mon, 23 Aug 1999 22:43:11 -0400 (EDT)

Return-path: <tfeder@wam.umd.edu>

Reply-To: tfeder@wam.umd.edu

To: Jeff Schmidt <jeff-schmidt@juno.com>

Cc: lugenbold@juno.com, jak@interport.net

Date: Mon, 23 Aug 1999 22:47:12 -0400

Subject: Re: Naming names

Message-ID: <37C20767.2DBF0F6A@wam.umd.edu>

References: <19990823.050304.14375.0.jeff-schmidt@juno.com>

X-Status: Read

X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

hi again, jeff,

this is an addendum to my previous e-mail. i'm glad you will summarize rather than read our comments. the reason for writing now is just to offer support--because from your note i realize that you worry he would try to collect data about you from us (i.e. use our names against your, unsuccessfully, i'd bet), whereas i'm thinking he'd use the information to penalize us. irony. well, let's not let him use any of it against any of us.

toni

30 August 1999

Steve --

Here are the notes that you requested. They outline the responses that I got when I asked colleagues who saw my annual review for permission to fulfill your request that I report their names to you. As you know, I did not want to give you this written report, but you insisted that I do so. I can only hope that you will use it to address staff concerns and not "kill the messenger."

Four themes were apparent in the responses from my coworkers.

1. They consider me to be a supportive and valuable colleague, and they want you to behave in accord with that view. They note that the long-standing staff morale problems did not originate with my review appeal.
2. Their anxiety was exacerbated by the fact that you were not open about your reasons for wanting their names. (Later, when I asked you specifically why you wanted their names, you refused to answer.) Thus the only thing they imagined coming from your investigation was punishment, of me or of them. They think they would be subject to guilt by association, because you have been so harsh with me.
3. They feel that their conversations were private and that to reveal them would be an invasion of their privacy. They made reference to the First Amendment, the spirit of which they evidently carry with them.
4. They agree with you that annual reviews are confidential, but they see that as a restriction on management, not on them. Thus they feel free to discuss their reviews, and many do. They think it would set a bad precedent if any of us were punished for that.

Please let me know if I can be of further assistance.

Jeff

S 001545

Science & Government Report

Bulletin

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HIGHLIGHTS IN THIS REPORT...

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EX-PHYSICS TODAY EDITOR CLAIMS HIDDEN MOTIVES WERE BEHIND FIRING

A former staffer at *Physics Today* magazine, fired nearly a year ago after announcing to the world that he had written a book partly on company time, has taken his campaign against his former employer to the National Labor Relations Board.

Jeff Schmidt alleges in papers filed with the NLRB that his employers seized on the opening sentence of his book, *Disciplined Minds*, as a pretext for firing him after 19 years on the PT staff. The book asserts, teasingly in his view, that he had written it on "stolen" time. PT management was not amused. According to the NLRB filing, he was summarily fired, with the only explanation offered by his boss, PT Editor Stephen Benka, being his admission.

The real reason for his dismissal, Schmidt maintains, was his continual griping about a repressive workplace environment. His complaints, he argues, were made on behalf of his colleagues and were therefore protected by labor statutes.

Schmidt's unfair labor practice charge against the American Institute of Physics, which owns PT, was dismissed by NLRB's Region Five in February for lack of evidence. But his case has since been taken up *pro bono* by a Washington law firm. While the magazine staff isn't unionized, Schmidt attorney Joseph Kolick maintains that labor law bars retaliation against employees

(Continued on p.2)

Q&A: RESEARCH!AMERICA PRESIDENT MARY WOOLLEY

Mary Woolley has headed the oddly punctuated assemblage of 400 universities, pharmaceutical companies, foundations, disease advocacy groups, and other beneficiaries of federal biomedical research funding for 10 of Research!America's 12 years. She spoke with SGR last month. The following is the text of the interview, transcribed and edited by SGR:

SGR. Your organization has been most credited with getting the budget-doubling movement at the National Institutes of Health going and keeping it going. Now that that seems assured of success, what do you do next?

Woolley. First of all, our mission has never been doubling the budget of the NIH. Right from the beginning, our mission has been to make medical and health research a much higher national priority. One of the ways that mission has been operationalized was to initiate and sustain the drive to double the NIH budget. That's just one piece. We see that the president—

(Continued on p.3)



TECHNICAL
INSIGHTS
FROST & SULLIVAN

EX-PHYSICS TODAY EDITOR

(Continued from p.1)

who attempt to improve workplace conditions on behalf of a group, whether formally organized or not. In his appeal of the regional office's dismissal, filed March 16, Schmidt demands his job back with back pay. Should his appeal be accepted, says Kolick, the NLRB general counsel would issue a civil complaint against AIP and a trial would be set before an administrative law judge.

"We think it's obvious that they used his book as a pretext for his firing," Kolick said. "We think we can show that most magazines are perfectly happy to let their employees engage in freelance writing, as long as they get their work done."

To bolster his case, Schmidt included in the appeal sworn affidavits from two former magazine staffers, attesting to the magazine's acceptance, if not encouragement, of freelance activities. In one affidavit, William Sweet, now managing editor of *IEEE Spectrum*, says he was told by the then-editor-in-chief of PT that he was free to pursue freelance projects while at his job. Sweet says he was also assured by AIP's human resources director, Theresa Braun, that he had unlimited long-distance telephone privileges.

"*Physics Today* had an exact way of defining people's jobs," Sweet's affidavit says. "If you did your job, then you were left alone." Sweet said he regularly contributed to *The Bulletin of the Atomic Scientists* while at PT, working on the freelance jobs openly and often discussing them with coworkers. No one from management warned, reprimanded, or disciplined him in any way for his outside work, he adds.

Repeated efforts to obtain comment from PT and AIP officials were unavailing. Benka didn't return a call. Publisher Randolph Nanna referred *SGR* to Braun, who didn't call back either.

In his appeal documents, Schmidt alleges that his unofficial role as spokesman for the staff got him in hot water with PT management on numerous occasions, making them eager to fire him. Over the years, he says, he sought additional staff to help ease workloads, lobbied for employee involvement in workplace dispute resolution, and urged changes in hiring practices to increase the racial makeup of the staff. The magazine's 16 editors and reporters are white, although some of the support staff are non-white.

In October 1997, the documents state, a half-dozen or so staff presented a written grievance to the magazine's advisory committee, complaining of "an increasingly repressive work environment at the magazine." Staff had endured increasing incidences of "verbal abuse, direct threats of dismissal and warnings about speaking out in front of both *Physics Today* managers and others outside *Physics Today*."

One of the signers of that petition, Jean Kumagai, confirmed Schmidt's contention that she and other staff were discouraged from talking among themselves while at the office. Kumagai, who's now also at *IEEE Spectrum*, said that on numerous occasions managers would show up uninvited during conversations and demand to sit in. One manager once referred to Schmidt as a "ringleader," she said.

While he "expressed some strong-minded views," Schmidt wouldn't have been fired by a company with a more progressive work environment, Kumagai said. The content of Schmidt's book, which deals with the angst of professionals trapped in intellectually unchallenging jobs, might have had something to do with his termination, she speculated, though news accounts quoted Braun asserting that was not the case. The book is something of a manifesto, urging those who populate the middle rungs of institutional ladders to form a union and "fight management's information advantage."

Schmidt says he can't remember how many times he's been asked why he'd want the job back. It's a matter of principle, he says, adding that demanding an offer to return isn't the same as accepting it. But he would take it, he says, at least for awhile, partly because he needs the money.

"People ask me how I could tolerate working in such a repressive environment," he says. "The answer is that I'm used to it, and I can tolerate a repressive environment so long as there's some resistance to it. It's naïve to expect managers to be nice guys."

He won a victory of sorts when Maryland's office of unemployment insurance last summer dismissed AIP's attempt to deny the benefits. The state agency ruled that AIP hadn't shown enough evidence to show he'd been fired for misconduct is proof enough of injustice. Those benefits have run out, and Schmidt says he hasn't found other work.

Apart from the legal battle, Schmidt has been working the "public pressure" angle. He provided *SGR* with a sheaf of letters that have been written on his behalf to PT's and AIP's management since the firing. One of the most recent, dated April 9, was signed by 136 individuals, mostly academics from a wide variety of fields, with a few union officials sprinkled in. Helping solicit its signatures, Schmidt says, was Noam Chomsky, the renowned MIT linguist.

"Your repressive actions harm the reputation of physicists," the letter to AIP Executive Director Marc Brodsky reads. "Worse, your repressive actions discourage free expression and organizing, and thereby work against democracy and social progress."

AIP's affiliation with the University of Maryland has even allowed Schmidt to portray himself a champion of academic freedom. In an April 19 letter to university President Clayton Mote Jr., Schmidt requests that the library privileges he lost with his firing be reinstated, arguing "the speech and action that led to my dismissal is consistent with university principles."

11 December 2000

Tom McCarthy
National Labor Relations Board
1099 14th Street NW, Suite 5530
Washington, DC 20570

Dear Mr. McCarthy:

Thank you for inviting me to meet with you today to present evidence backing my charge against *Physics Today* magazine, my former employer. As I will explain, *Physics Today* fired me in retaliation for my workplace activism. This activism includes my work with coworkers to address workplace issues such as working conditions, workload, pay, job security, distribution of job tasks, punitive action by management against individual staff members and so on. The activism for which they retaliated also includes concerted activity with coworkers to secure the right of staff members to discuss workplace issues with each other, as well as simple communication with coworkers about workplace issues.

As former coworkers will testify, I was a workplace activist at *Physics Today*, which is published by the American Institute of Physics, in College Park, Maryland. While doing my assignments conscientiously and always beating my deadlines, I worked with other staff members to improve the organization and give the staff a say in decisions affecting their working lives.

The company was out to silence me. Firing me was the final step in an escalating series of very repressive measures that the company took to stop me from speaking to coworkers about workplace issues and to stop me from speaking out on behalf of concerned coworkers. Those measures included inaccurate, unfair and punitive 1998 and 1999 performance reviews that grossly underreported the amount of work I had done, a gag order on me, a ban on private conversations between me and my coworkers, and a witch-hunt that frightened coworkers who worked with me on workplace issues or who merely spoke with me about such issues.

Physics Today management turned against me permanently around 1997, and in my next annual performance review went back and criticized me strongly for working with coworkers to raise workplace issues during the year prior to the one under review. From then on, *Physics Today* subjected me to what amounted to a non-expiring demerit system in which my standing in the eyes of management was lowered by all of my past perceived misbehavior, no matter how long past. Nothing was forgotten, and whenever my supervisors criticized me, they made explicit references to my earlier workplace activism. (For example, during my 1999 performance review — the last one before I was fired — management criticized me harshly for circulating to the staff an earlier memo that I wrote to management covering many workplace issues.) Management seemed set to welcome any excuse to fire me.

The repressive conditions that management imposed to stop my organizing efforts did not deter me. As management was well aware, my organizing efforts continued, and continued to have an impact on the workplace. I was operating under explicit orders not to discuss workplace issues privately with coworkers. And my coworkers knew that management didn't want them to talk to me about workplace issues. (They would come and talk to me anyway, often closing the door to my office and positioning themselves behind it so that they couldn't be seen from the outside.) I met with coworkers to discuss individual and group workplace problems, and to plan individual and collective action for addressing the problems. This involved, for example, spreading the word to get coworkers to support each other in disputes with managers and getting coworkers to push for common goals at meetings — goals such as hiring more staff to handle the increased workload, staff participation in decisions affecting the distribution of work, relief for staff members with excessive workloads and so on.

Because of the repression, the right to organize itself became a big issue. In one instance (17 – 30 August 1999), after I organized support among coworkers for the right of staff members to discuss performance reviews and disciplinary action with each other, management made a two-week-long effort to intimidate those involved, by demanding that I reveal which coworkers I had spoken with and what they had said. In the end, I spoke to management on behalf of all the coworkers involved, and defended our right to discuss workplace issues privately. I refused to reveal which coworkers were involved in the discussions and what was said. This left my supervisor angry.

In the months leading up to my dismissal, management caught me several other times violating the ban on discussing workplace issues privately with coworkers. The last time that I recall was two weeks before they fired me. Management knew that they discovered only a fraction of my conversations with coworkers and that I was not about to stop being what they considered a bad influence on my coworkers. Coworkers were upset but not surprised when I was fired.

The company fired me on the pretext of misconduct: They accused me of writing a book on company time. The State of Maryland Department of Labor, Office of Unemployment Insurance, conducted a detailed investigation into the circumstances under which *Physics Today* fired me, and found no evidence of even “simple misconduct” on my part, leaving my workplace activism as the more obvious explanation for my firing. Thus the state awarded me full unemployment benefits despite the fact that I was fired for cause. The company, lacking any real evidence to back its claim, did not appeal. Inconveniently, for 19 years they had given me raises and promotions based explicitly on close scrutiny of the quantity and quality of my work (they invariably said that I met or exceeded the job requirements). At the time they fired me, I was two months ahead in my work, having just fulfilled my entire annual review-period work quota in the first 10 months of the period, and I had a thick file of praise for my work — from both management and outsiders.

I did write a book — *Disciplined Minds* (Rowman & Littlefield, 2000) — but on my own time. I am sure the company didn’t like the book, in part because it argues strongly that workplace organizing is the solution to workplace problems. The company’s phony charge of misconduct was based on its opportunistic interpretation of dramatic writing in the book itself (a nod to Abbie Hoffman’s 1971 classic, *Steal This Book*). Instead of simply ignoring the book, management chose to make the most extreme interpretation possible of writing in it set years ago in another city. It is very telling that despite my 19 years of service to *Physics Today*, my supervisors did not ask me even a single question about the book, or about anything else, before dismissing me. I hope you will consider this fact as you apply common sense in your investigation. My supervisors were looking for an opportunity to get rid of me.

The company apparently thought the book looked so radical that no one would defend me. But that hasn’t been the case. In addition to the Maryland Department of Labor finding, there have been many protests, including protests by sixteen former *Physics Today* staff members and by the National Writers Union (UAW local 1981), of which I am a member.

I am enclosing a chronological list of some relevant events, along with some documents referred to in the list, and other information. I can provide much more information and much more detail on the enclosed information; just let me know what you need.

I and the many people who are interested in this case find it difficult to imagine that the company’s behavior is permitted by the law that you administer. We hope that, in the interest of justice, you will confirm our understanding.

Sincerely,

Jeff Schmitt

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
FIRST AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 5-CA-29366	Date Filed

INSTRUCTIONS

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer American Institute of Physics		b. Number of workers employed approx. 500
c. Address (street, city, state, ZIP code) 1 Physics Ellipse College Park, MD 20740	d. Employer Representative Marc H. Brodsky	e. Telephone No. 301 209 3100
f. Type of Establishment (factory, mine, wholesaler, etc.) Publishing company	g. Identify principal product or service Physics journals	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		
<p>Since on or about May 31, 2000, the above-named Employer, by its officers and agents, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by terminating under pretext the employment of Jeff Schmidt, senior associate editor, because of his protected concerted activities and because he advocated formation of a union at the workplace.</p> <p>Since on or about August 29, 2000, the above-named Employer, by its officers and agents, announced a rule prohibiting staff members from discussing their performance reviews with other staff members.</p>		
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Jeff Schmidt		
4a. Address (street and number, city, state, and ZIP code) 3003 Van Ness Street, NW, W406 Washington, DC 20008		4b. Telephone No. 202 537 3645
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) N/A		
6. DECLARATION		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		
By <u>Jeff Schmidt</u> (signature of representative or person making charge) Jeff Schmidt		Individual (title if any)
Address <u>3003 Van Ness Street, NW, W406</u> <u>Washington, DC 20008</u>		<u>202 537 3645</u> (Telephone No.)
		<u>1/4/01</u> (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

TPM

S 001550

27 January 2001

Tom McCarthy
National Labor Relations Board
1099 14th Street NW, Suite 5530
Washington, DC 20570

Dear Tom:

It was good talking with you yesterday. Thanks for the update on your investigation.

Enclosed is the document that I promised to send. It is an e-mail message from American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky to University of California, Berkeley, professor Frederick M. Dolan, concerning my dismissal.

To my knowledge, this is the first time Brodsky has responded to someone protesting my firing. This may be because of the writer's status as a professor at the University of California, Berkeley.

As you will see, rather than denying that AIP fired me for the workplace activism and advocacy cited by Dolan, Brodsky says the company considered "not just" that.

Best wishes,

A handwritten signature in cursive script that reads "Jeff Schmidt". The signature is written in dark ink and is positioned below the "Best wishes," text.

Date: Tue, 23 Jan 2001 19:38:43 -0500
From: "Marc Brodsky" <brodsky@aip.org>
To: <fmdolan@socrates.Berkeley.EDU>
Subject: Re: Jeff Schmidt

Dear Prof Dolan,

I appreciate the thoughtfulness of your email. I must say, I agree most with what you say in you opening paragraph.

Unfortunately employers are more constrained than most in their ability to comment about an individual employee and any reasons for termination. For the most part I feel that is good because it protects individual privacy. You will have to deal with the publicly available facts and deduce your own conclusions. However, I believe AIP acted after careful considerations of many facts and not just the ones you cited.

Sincerely,

Marc Brodsky

"Frederick M. Dolan" <fmdolan@socrates.Berkeley.EDU>
1/22/01 11:38:37 PM

To Marc Brodsky, via email
Executive Director
American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Dear Dr. Brodsky:

Ordinarily, I would never think of intervening in cases involving hiring and firing in organizations with which I am unfamiliar. I appreciate the complexity of such decisions and understand that they can be difficult for outsiders to understand.

In the matter of Jeff Schmidt's dismissal from his position at Physics Today, I feel that I must protest. I have known Jeff for almost 25 years, and know him to be a man whose integrity and skill are simply above reproach. Whatever suggestions he may have had for Physics Today were, I am certain, well worth considering. While the American Institute of Physics may not appreciate the perspectives he brings to bear on its operations, you

surely must know that issues such as diversity, staff participation, and the like, are not going to go away. To suggest that taking some time on one's job to work on a book (if that is indeed what Jeff did) is a firing offense is, to put it crudely, Neanderthal. I should think, on the contrary, that Physics Today would be eager to take credit for nurturing the author of an excellent and incisive inquiry into the state of the discipline.

The concerns Jeff articulates are part of American life; they are here to stay. Firing Jeff, under the circumstances, is all too transparent an act, and is not likely to wash, anywhere, with anyone.

Sincerely yours,

Frederick M. Dolan

Professor Frederick M. Dolan
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7325 Dwinelle Hall
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March 16, 2001

Yvonne T. Dixon, Esquire
Director, Office of Appeals
National Labor Relations Board
Franklin Court Building
1099 14th Street, NW; Room 8820
Washington DC, 20570-0001

Re: American Institute of Physics; Case No. 5-CA-29366

Dear Ms. Dixon:

Charging Party Jeff Schmidt ("Schmidt") respectfully appeals Region 5's dismissal of his unfair labor practice charge alleging that his employer, the American Institute of Physics ("Institute"), discharged Schmidt in violation of Sections 8(a)(1) and 8(a)(3) of the Act. The dismissal should be reversed and a complaint issued because the available evidence shows that the Institute's termination of Schmidt was motivated solely by Schmidt's significant history of concerted activity to improve the working conditions of he and his co-workers at the Institute.

The Institute's asserted reason for firing Schmidt -- that he wrote a book in part on company time -- is a transparent pretext. In conformity with the industry norm, many writers employed by the Institute did outside writing on company time. The Institute took no disciplinary action against those employees; rather, it condoned (or even encouraged) the practice. What distinguished Schmidt, and ultimately led to his discharge, was that for many years he spearheaded concerted employee efforts to improve working conditions at the Institute, and did so in the face of blunt warnings that he must stop such protected activity or "pay the penalty." When Schmidt persisted, management seized upon Schmidt's

“admission” that he wrote his book on company time to rid itself of the budding unionist. Such retaliation is an archetypal violation of the Act.

SUMMARY OF THE CASE

Jeff Schmidt worked as an editor for *Physics Today*, a magazine owned and published by the Institute for 19 years. During that time, he consistently produced commendable work product. Nonetheless, on May 31, 2000, he was summarily fired, supposedly for doing what he and others (at the Institute and throughout the industry) did with management’s tacit blessing – using his spare time at the office to engage in freelance writing.

The real explanation for this otherwise inexplicable conduct lies in Schmidt’s protected activity and management’s displeasure at such activity. Thus, throughout Schmidt’s tenure at *Physics Today*, he participated with, and often organized, his co-workers in concerted activity seeking to improve the working conditions of the magazine’s staff. On many occasions, both orally and in writing, Schmidt presented the concerns felt by he and his colleagues on a variety of matters, including the felt need for relief from an increasing workload, the abusive treatment staff received from some managers, and a request for increased staff participation in grievance procedures.

Management’s response was also consistent. It actively discouraged such activity. Evidence of the Institute’s animus (detailed below) includes verbal outrage at Schmidt for speaking on behalf of his co-workers at staff meetings, performance evaluations criticizing Schmidt’s concerted activity (not his work product), and even an order forbidding Schmidt and his co-workers from having private conversations concerning

workplace concerns. Ultimately, in 1998 (and again in 1999) Schmidt was downgraded on his performance review, explicitly because of his protected activity in voicing his, and his co-workers, concerns. When he appealed to higher management, arguing that this review constituted an improper reprisal for protected activity, he was told by the Director of *Physics Today* that “when you do things your supervisors would be happier that you not do, then you have to be willing to pay the penalty.”

In April 2000, Schmidt published his first book, Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System That Shapes Their Lives.¹ While the vast majority of the writing was done at home, including a six-month unpaid leave of absence, Schmidt also worked on the book during his lunch hour and breaks. At the time, such activity engendered no comment from management. That was not surprising, for it was commonplace for employees (at *Physics today* and throughout the industry) to pursue freelance work at the office. Others at *Physics Today* did so openly and were not reprimanded, even when their freelance work was well-known to management.

Nonetheless, the Institute seized on a single passage of hyperbole in the Introduction to Schmidt's book -- the statement that “This book is stolen. Written in part on stolen time.” -- to fire him. That was an obvious pretext. Management was not upset that one of its editors had become a successful author. Rather, management saw Schmidt's literary characterization of his production methods as the perfect excuse to rid itself of an employee who, against management's wishes, continued to organize his fellow workers to

¹ Schmidt, Jeff. Disciplined Minds: A critical look at salaried professionals and the soul-battering system that shapes their lives; Rowman & Littlefield Publishers, Inc., 4720 Boston Way, Lanham, Maryland 20706.

stand up for their rights. For that infraction, the Institute inflicted the ultimate workplace penalty – summary dismissal. In doing so, it violated the most basic provisions of the Act.

STATEMENT OF FACTS

Jeff Schmidt began working as an editor for *Physics Today* in March 1981. See Exhibit 2, Affidavit of Jeff Schmidt² (“Schmidt Aff.”), p. 1, ll. 3-4. During his 19 years at the Institute, Schmidt continuously participated in, and often organized, concerted activity aimed at improving the working conditions of the magazine’s support staff, writers, and other editors. These concerted activities were often met with criticism and reprisals from management. Below is a description of some of the activities that Schmidt participated in, and of management’s responses thereto.

Schmidt’s Concerted Activity and Management’s Hostility to Such Activity

(1) In October 1983, Schmidt and five co-workers boycotted the annual *Physics Today* advisory committee luncheon to protest the support staff’s exclusion from the committee meeting. Schmidt and co-worker Daniel Gladstone wrote a memorandum, signed by eight staff members, explaining the protest,³ and submitted it to the magazine’s

² Because the Regional Director issued a “short form” dismissal (See Exhibit 1), we cannot tell his reasoning for refusing to issue a complaint in what appears to us is a clear violation. It may be that Mr. Schmidt, who was then unrepresented did not fully appreciate the significance of adducing facts concerning his protected, concerted activity and management’s animosity to such activity, or that he did not understand the importance of showing what is obvious to any writer or editor, that freelance writing was accepted and encouraged, at *Physics Today* and throughout the industry. Accordingly, we take this opportunity to supplement the record and, if thought necessary by the Office of Appeals, would be happy to cooperate in any further investigation.

³ The body of the Memo stated:

We regret we will not attend today’s lunch. Because we are no longer included in the day’s substantive discussions, we do not feel it is appropriate for us to attend the day’s more social event. We are sorry

advisory committee. See Memo from *Physics Today* Staff to The Advisory Committee and Dr. H. Davis, dated Oct. 11, 1983 (Exhibit 3). The Institute's management called a meeting of the *Physics Today* staff and demanded greater discipline. Later that month, Schmidt and several co-workers drafted and issued a seven-point memo, "General Problems With [*Physics Today*] management," raising concerns around "work flow," "delegation of responsibility," "staff input," and "keeping staff informed." See Memo dated October 27, 1983 (Exhibit 4).

(2) In November 1989, Schmidt assisted Per H. Anderson, a co-worker who had recently been fired, in preparing his appeal to the Director of the Institute. The appeal detailed Andersen's mistreatment by management, including an "unacceptable workload and salary." See Letter (Draft) to Dr. K. Ford from Per H. Anderson, dated November 21, 1989 (Exhibit 5).

(3) In January 1991, Schmidt played a leading role in organizing seven staff members to meet off-site and discuss working conditions at *Physics Today*. Following that meeting, the group drafted a memo addressing their concerns and the need for improving the magazine's "perennial scheduling problem," "low morale at *Physics Today*," and management's "disrespectful and frequent abusive treatment of staff members." See Untitled Memo (Exhibit 6). Because one or two members of the group were fearful of reprisal, the memo was never submitted to management. At subsequent staff meetings, however, Schmidt raised these issues with management.

to inform you so late, but we had been waiting for a more definite invitation to be made.

Memo from Physics Today Staff to The Advisory Committee and Dr. H. Davis, dated Oct. 11, 1983 (Exhibit 3).

(4) In June 1994, Schmidt organized a meeting of ten staff members to specifically address the disrespectful, sometimes abusive treatment they received from the Editor of the magazine, Gloria Lubkin. When Managing Editor Kenneth McNaughton discovered the meeting in process, he asked if he was supposed to be invited, and Schmidt spoke for the group and told him he was not.

(5) In April 1995, Schmidt spoke out on behalf of the staff against the increasing workload, and McNaughton responded by questioning Schmidt's own personal workload, in front of his colleagues. Schmidt relayed this occurrence in a memo to Editor Steve Benka, dated May 25, 1995, stating "I am sure you recall that when I spoke strongly on behalf of the staff [about the increasing workload at the magazine], McNaughton responded with an angry personal attack, saying that I haven't done more work. . . . this marks the first time a manager has become angry about [my expression of views on the quantity of my work]. See Memo to Editor Steve Benka from Jeff Schmidt, dated May 25, 1995 (Exhibit 7).

(6) In October and November 1996, Schmidt and several other co-workers, including Jean Kumagai, Toni Feder, and Paul Elliott, lobbied management to hire additional staff to help with their increasing workload. After discussions with more co-workers, Schmidt, Kumagai, Feder, and Elliott prepared and presented a ten-point list of changes to be implemented in the workplace. See Proposals for discussion at *Physics Today* retreat, dated November 15, 1996 (Exhibit 8). Among the requests were: (1) better job security; (2) staff involvement in workplace dispute resolution; (3) better distribution of job tasks; and (4) changing hiring practices to increase diversity. See Exhibit 8.

(7) In September 1997, Schmidt and a majority of staff members presented a similar list of requests to management and requested time on the agenda to raise staff concerns at the company retreat. Management responded angrily in the debates between staff and management over the proposed agenda in the days leading up to the September 25 retreat. At a staff meeting before the retreat, Schmidt again asked Editor Charles Harris to include more support staff. Harris responded that he did not want them to attend. At the retreat, when Schmidt raised the issue of whether staff members may ask questions, Harris said no. When Schmidt questioned Harris' position, Harris angrily shouted, "No! That's an order!" Following this episode, Harris commented negatively to Schmidt's co-workers about Schmidt's job performance, and he told Schmidt that he thought Schmidt's request for the right to ask questions was a disguised attempt to raise issues of staff concern.

(8) October 1, 1997, Harris and Benka issued Schmidt a written notice implying that Schmidt may be fired the next time he said anything that management considered "counterproductive." See Memo to Jeff Schmidt from Charles Harris, dated September 26, 1997 (Exhibit 9). This notice also prohibited Schmidt from discussing this issue with his co-workers, stating:

"We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated. This notice is to be treated as confidential.

Exhibit 9. When Schmidt informed co-workers of this warning, Harris criticized Schmidt for doing so. On October 17, 1997, Schmidt and a group of co-workers, including Jean

Kumagai, Paul Elliot, Graham Collins, and Toni Feder, presented a written grievance to the *Physics Today* Advisory Committee at its annual meeting stating:

What concerns us is the increasingly repressive work environment at the magazine. . . . We regret having to be the undersigned here, but in the last year . . . we have been increasingly subjected by management to verbal abuse, direct threats of dismissal and warnings about speaking out in front of both *Physics Today* managers and others outside of *Physics Today*. . . . Both [Schmidt] and Graham [Collins] have been outspoken about problems that many of us see at the magazine. We feel that the warnings contribute to a repressive atmosphere at the magazine and restrict all of us. We hope the advisory committee will do whatever it can to get these warnings retracted and to remind the PT managers that repression is counterproductive. Such steps would go a long way toward diminishing the fear that the staff members now associate with trying to openly address problems at the magazine.

See Letter to Members of the Physics Today Advisory Committee, dated October 17, 1997 (Exhibit 10). One and one half months later, the warnings against discussing grievances with co-workers were (briefly) rescinded. See E-mail from Charles Harris to *Physics Today*, dated December 1, 1997 (Exhibit 11).

(9) In January 1998, Stephen Benka, Editor of *Physics Today*, interrupted and broke up a private conversation, held outside of working hours, between Schmidt and co-worker Toni Feder. Schmidt Aff., p. 5, ll. 27-28. Later that day, Schmidt was speaking on the telephone with Feder. Benka came into Schmidt's office and asked if he was talking to an author. When Schmidt responded that he was talking to a co-worker, Benka informed him that he wanted in on the conversation. Shocked at this invasion, Schmidt placed Feder on speakerphone and informed her of Benka's presence. Benka said that Feder should come to Schmidt's office. When she arrived, Benka demanded to know what Feder and Schmidt had been speaking about, and announced that:

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he was forbidding all private conversations between staff members at work, because of the workplace activity that had taken place during the last year; he said that all conversations between staff members must be open to monitoring by management.

Schmidt Aff., pp. 5-6, ll. 27-28, 1-3. Thus, once again, private workplace dialogue was banned.

(10) In March 1998, Schmidt met with Benka to discuss Schmidt's 1998 performance review. Schmidt Aff., p. 6, ll. 9-10. In that review, "Benka condemned my workplace activities with co-workers and focused in particular on my leading role in such group activities as the 1996 retreat. . . . Benka said that I had spent a lot of time in 'disruptive efforts' and added that I had been formally reprimanded during this period, and although that it had been buried, it certainly had an effect on the office." Schmidt Aff., p. 6, ll. 10-15. Benka then warned, "Anything -- any behavior that generates such feelings, such divisions, such divisiveness, such disruption among the staff -- is not going to be tolerated anymore." When Schmidt told Benka that staff members feared reprisal for raising workplace problems to management, Benka responded:

Now, why would they fear that? If they're acting in good faith, then why would they fear it? But if they're not acting in good faith, they may have reason. If they're acting in order to engender divisiveness and trouble, if they're acting in bad faith, they may have reason to fear. If they're that afraid, maybe they should go where they're less afraid -- if it's that unbearable.

Schmidt Aff., p. 6, ll. 9-19.

(11) On the evaluation form, Benka reduced Schmidt's performance rating from "Exceeds Job Requirements" to "Meets Job Requirements." Schmidt Aff., p. 6, ll. 17-19. Benka also added a large increase in Schmidt's workload, whereby he would now be expected to edit 18 articles a year, rather than 14, a 28% increase.

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(12) Schmidt appealed his performance review to James Stith, Director of *Physics Today*, and ^{Theresa}~~Kathy~~ Braun, the Director of Human Resources. In his appeal, Schmidt contended that the "biased review [he] received was punishment for [his] organizing activity at the magazine." See Memo from Jeff Schmidt to Theresa Braun and James Stith, Subject: [Schmidt's] 1998 performance review, dated April 27, 1998 (Exhibit 12).

(13) Several months later, Schmidt met with Stith about his 1998 performance review. In that meeting, Stith "made it clear to me that my workplace activity, apart from my job assignments, played a central role in my critical review and lowered job performance rating." Schmidt Aff., p. 6, ll. 21-23. In a response to Schmidt's complaints of improper retaliation, Director Stith bluntly warned "when you do things your supervisors would be happier that you not do, then you have to be willing to pay the penalty, even if what you do is right." In their meeting, Stith acknowledged that he knew about the "ban on private conversations in the workplace" and "would look into it." Schmidt Aff., p. 6, ll. 24-25.

The ban, however, was never rescinded.

(14) To the contrary, upon returning from a six month unpaid leave of absence (December 1998 to June 1999), Schmidt was immediately criticized by Benka for sharing his appeal with his co-workers and told Schmidt "that he was lucky to still have [his] job after doing that." Schmidt Aff., p. 7, ll. 3-7.

(15) In August 1999, Schmidt received his job performance review for the period from February 1998 to August 1999. This review stated, "[d]uring this review period, Jeff repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate, thereby undermining the editorial effort of *Physics Today*. Such behavior is unacceptable." Schmidt Aff., p. 7, ll. 15-17. When Schmidt met with Benka to

discuss the review, "Benka expressed anger about [Schmidt's] communications with co-workers about workplace issues." Schmidt Aff., p. 7, ll. 26-27. Benka then admonished Schmidt for "talking to co-workers about the 1999 performance review and demanded that [Schmidt] tell him which co-workers [he] had spoken with about issues raised in the 1999 review," which Benka again requested in an e-mail to Schmidt. Schmidt Aff., p. 8, ll. 5-10.

(16) Later that month, Schmidt met with several other co-workers to discuss "how to protect our right to communicate privately . . . about workplace issues such as performance reviews and punitive treatment by management." Schmidt Aff., p. 8, ll. 11-15. In that meeting, Schmidt informed the co-workers that Benka wanted the names of the staff members with whom Schmidt had shared the results of his 1999 performance review. Schmidt Aff., p. 8, ll. 11-12. When Schmidt refused to give Benka the names of those co-workers, Benka reiterated his opposition to private conversations between staff members about workplace issues and responded, "everything to do with the job is [his] domain and there should be no privacy from [him]." Schmidt Aff., p. 8, ll. 18-20.

In sum, by late 1999, management had made it eminently clear that it wanted Schmidt's concerted activity to stop. It also had repeatedly threatened him with dismissal if its warnings were not heeded.

Schmidt's Firing

In April 2000, Schmidt published his first book, Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System That Shapes Their Lives. In the Introduction of the book, Schmidt writes:

This book is stolen. Written in part on stolen time, that is. I felt I had no choice but to do it that way. Like millions of others who work for a living, I was giving most of my prime time to my employer. My job simply didn't leave me enough energy for a major project of my

own, and no one was about to hire me to pursue my own vision, especially given my irreverent attitude toward employers. I was working in New York City as an editor at a glossy science magazine. . . . So I began spending some office time on my own work, dumped my TV to re-appropriate some of my time at home, and wrote this book.

Exhibit 13.

On May 31, 2000, Stephen Benka, Editor of *Physics Today*, Theresa Braun, the Institute's Director of Human Resources, and Randolph Nanna, the Publisher of *Physics Today*, called Schmidt to the personnel department, where Benka told Schmidt:

We see in your own introduction to your own book that you have stolen from the magazine. Therefore, you can no longer be employed by *Physics Today*. Your employment is terminated, now.

Schmidt Aff., p. 2, ll. 3-6. No other reason was ever given to Schmidt or, to his knowledge, to anyone else for his dismissal.⁴ Schmidt was then told that he would not be allowed to reenter the building at any time or for any reason, and he was escorted to the front door. Schmidt Aff., p. 2, ll. 10-11. Benka then called a meeting of Schmidt's co-workers, and informed them that Schmidt had been fired for cause. Later in the day, Benka went from office to office, cryptically explaining to Schmidt's co-workers that Schmidt had been fired for doing "something other than what Schmidt had been paid to do." Schmidt Aff., p. 2, ll. 18-24. Neither Benka, nor Nanna, nor Braun, however, asked Schmidt what he meant by "office time" or whether he had actually worked on the book during working time. In fact, Schmidt's reference to "stolen time" was hyperbole, a

⁴ In a proceeding before the State of Maryland Department of Labor to determine Schmidt's eligibility to receive unemployment benefits, the Institute contended that Schmidt "was discharged from the [Institute] on 6/2/00 because it was alleged that the claimant wrote a book on company time." ⁴ See Exhibit 14.

literary reference to Abbie Hoffman's 1971 classic, Steal This Book. Schmidt Aff., p. 3, ll. 38-39, and he swears that:

I never used any work time except break time and lunchtime to work on my book. I always gave company work priority, even over break time and lunch time and weekends, and for 19 years I had the best record of meeting deadlines of any staff member. The production department kept and has these records.

Schmidt Aff., p. 4, ll. 1-4.

Although Schmidt did not work on his book during company time during his tenure at the magazine, many of his co-workers openly pursued work that was not related to the magazine while on company time. Declaration of William Sweet⁵ ("Sweet Decl.") ¶ 6; Declaration of Chris Mohr⁶ ("Mohr Decl."), ¶ 6. None were fired, disciplined or even admonished to stop. For example, William Sweet ("Sweet") who was employed at *Physics Today* from March 1984 until 1993, stated that "upon being hired, [he] asked the Editor in Chief, Hal Davis, whether [he] could pursue freelance projects while [Sweet] worked at *Physics Today*. Davis said that that would be fine as long as I did not attach *Physics Today* or the Institute to anything [Sweet] wrote." Sweet Decl., ¶ 4. Sweet also confirmed with human resources, then headed by Theresa Braun, that he would have unlimited long-distance telephone privileges as a benefit of working at the Institute. Sweet Decl., ¶ 4.

Typical of other employees at the magazine, Sweet openly worked on a number of freelance pieces, making long-distance calls, using the company's computer and the magazine's library for research, and discussing the articles with his co-workers. Sweet

⁵ Declaration of William Sweet, Exhibit 15.

⁶ Declaration of Chris Mohr, Exhibit 16.

Decl., ¶¶ 6, 8. One particularly provocative article resulted in a great deal of controversy and publicity. This article, which concluded that a nuclear explosion had occurred at Chernobyl, led to many responsive articles and interviews of Sweet, which ultimately connected Sweet with the Institute. See Exhibit 15. Nonetheless, Sweet was in no way disciplined. Sweet Decl., ¶ 7.

Physics Today's tolerance of outside work on company time reflects the norm in the industry. As Sweet explains:

In my experience, freelancing on an employer's time (and using an employer's resources) is and was ubiquitous in the newspaper and periodical industry. It generally is taken for granted that reasonably ambitious people will use company time, long distance telephone privileges, research facilities, and the company's computers to further their own writing careers.

Sweet Decl., ¶ 8.

Further, *Physics Today* had an exact way of defining peoples' jobs. If you did your job, then you would not be bothered. Writers were expected to write one page a week or four pages a month; editors were expected to edit one article every two weeks. In theory, if I completed four pages in one week, I would have the remaining three weeks to work on other things. . . . [T]he employer benefits from such a practice as these writers will give the magazine the right of first refusal for publication. Freelance work can increase a staff writer's stature and lead to valuable spin-off projects for one's employer. Indeed, my MIT article about Chernobyl led to a tip that resulted in my writing a major investigative piece on a closely related subject, which *Physics Today* published.

Sweet Decl., ¶¶ 5, 8.

Another *Physics Today* editor, Chris Mohr, also spent a considerable amount of time pursuing freelance projects while working for the magazine. In his declaration, Mohr states:

While at *Physics Today*, I wrote some pieces for small magazines, notably *Lies of Our Times* (now defunct). That magazine published

one long piece detailing scientists' participation in the Gulf War ("The Gulf War and the Technologists," March 1992), as well as several shorter items. I spent upwards of 20 hours working on the article total, of which at least 15 hours was spent at work. On other pieces I wrote while at *Physics Today*, I would generally write 80% of the article at work, and 20% at home. I did all the writing on my computer at work and read all the source material while at work because it was based on the scientific magazines and publications received by *Physics Today*. I did this openly and spoke with co-workers about the article. No one ever said anything about my working on this piece.

* * *

It was my understanding that AIP, as an institution, encouraged the practice of its employees doing outside writing. The Institute's history department published books of employees which were understood to have been written on company time. To my knowledge the Institute never had a policy against its employees pursuing and publishing writings outside the Institute, and doing such work on company time.

Mohr Decl., ¶¶ 6, 8.

In fact, several employees of *Physics Today* published articles while they were employed there. See Exhibit 17. In 1994, *Physics Today's* Managing Editor Kenneth J. McNaughton pursued a 200-page editing project as a guest editor, while Managing Editor. See *Creativity Research Journal*, Vol. 7, Nos. 3 and 4, 1994 (Exhibit 17).

ARGUMENT

On these facts, there is little doubt that Schmidt's firing violated the Act. Schmidt openly and consistently engaged in protected concerted activity, such activity was known to the management of *Physics Today*, and management repeatedly criticized, disciplined, and targeted Schmidt because of his participation in protected activity. This demonstrated animus, combined with the transparently pretextual nature of management's stated reason for firing Schmidt, leave little doubt that management's motive was unlawful. Certainly, Schmidt deserves his day in court to make that case.

A. Legal Standard

Section 8(a)(1) of the National Labor Relations Act provides:

It shall be an unfair labor practice for an employer – (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7.

29 U.S.C. § 158(a)(1). Section 7 protects the rights of employees “to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157. Although “concerted activity” is not expressly defined in the Act, the term “clearly enough embraces the activities of employees who have joined together to achieve common goals.” New River Industries, Inc. v. NLRB, 945 F.2d 1290, 1294 (4th Cir. 1991). Letters, or other writings, intended to resolve or call attention to conditions of employment are considered protected, concerted activity. See id. at 1295. The activity, must, however, be engaged with or on the authority of other employees, and not solely by and on behalf of the employee himself. Meyers Industries, Inc., 268 NLRB 493 (1984).

“Once the activity is found to be concerted, an 8(a)(1) violation will be found if, in addition, the employer knew of the concerted nature of the employee’s activity, the concerted activity was protected by the Act, and the adverse employment action at issue was motivated by the employee’s protected concerted activity.” Meyers Industries, Inc. 268 N.L.R.B. 493, 17 (1984); Wright Line, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981). Section 8(a)(3) protects against firings [of employees] due to anti-union animus. See Dorsey Trailers, Inc. v. NLRB, 233 F.3d 831, 839 (4th Cir. 2000) (citing NLRB v. Wright Line, 662 F.2d 899 (1st Cir. 1981)). In order to establish an employer’s discriminatory discharge, the “General Counsel must prove by a preponderance of the evidence that anti-union animus was a substantial or motivating factor in the discharge.” Id. The burden then shifts to the employer to prove that it would have fired the employee

even in the absence of anti-union animus. *Id.* If the Board finds that the Institute's stated reason for firing Schmidt is false, the Board may draw the inference that the Institute discharged Schmidt for unlawful reasons. *Active Transportation*, 296 NLRB 431, 432 n.8 (1989).

B. Schmidt's history of concerted, protected activity was well known by the Institute and the Management of *Physics Today*

There is no doubt that Schmidt engaged in concerted activity protected by the Act. He and his co-workers shared a rich history of collective activity aimed at improving conditions for support staff, writers, and other editors. For many years, Schmidt and his co-workers repeatedly addressed issues concerning: (1) requests for relief from an increasing workload; (2) staff involvement in dispute resolution, decision-making, the hiring process, and staff's attendance at the Institute's annual conference; (3) relief from disrespectful and abusive managers; and (4) relief from management's restrictions on staff's private communications on both working and non-working time. *See* Exhibits 4, 5, 9, and 10. This activity clearly was intended to call management's attention to perceived deficiencies in working conditions.

It also clearly was "concerted." Typically, Schmidt and his co-workers would hold a meeting to discuss workplace problems and potential solutions. Thereafter, one or more co-workers, usually including Schmidt, would draft a memoranda on behalf of the staff, and present their concerns to management. Sometimes, Schmidt and his co-workers would raise their concerns verbally at staff meetings. In short, Schmidt acted not as a lone wolf looking out for his own interests; rather, he acted as a spokesperson for his fellow workers. Accordingly, his activity was protected by the Act. *See New River Industries*, 945 F.2d at 1295; *Meyer Industries, Inc.* 268 NLRB at 497.

C. Management repeatedly criticized, disciplined, and ultimately discharged Schmidt in retaliation for Schmidt's participation in these activities.

Schmidt's concerted, protected activity invariably was met with reprisals from management. Schmidt's protected activity was criticized publicly, he was downgraded on his evaluation expressly because of his protected activity, he was ordered to stop having private communications with co-workers about workplace issues, and he was admonished that if such activity continued, he would have to "pay the penalty." Ultimately, when management thought that it had a lawful excuse, it carried out its threats and fired Schmidt.

A few examples suffice. At the 1997 retreat, Schmidt attempted to raise work place concerns. Harris responded with an outburst, screamed at Schmidt, and ordered him to stop raising staff issues during the retreat's question and answer period. This was not a mere isolated loss of temper. It was followed by a written warning to Schmidt (following the retreat) that he should refrain from such "counterproductive" behavior and that he should not discuss this warning with his co-workers.

Management's criticism of Schmidt's concerted activity was the main focus of Schmidt's 1998 and 1999 performance evaluations. Despite the fact that the stated purpose of such evaluations was to "give the employee an opportunity to sit down with [his or her] supervisor to review how [the employee's] work has progressed since the last review" (see AIP Employee Handbook, 1999, p. 18 [emphasis added] (Exhibit 18)), Schmidt's 1998/99 evaluations barely addressed the quality of his work product; they focussed on his tenacity in raising workplace concerns that management did not want to hear.

When Schmidt appealed his 1998 evaluation to the Institute's Director of Physics Programs, James Stith, Director Schmidt bluntly admitted that "[Schmidt's] workplace activity, apart from [his] job assignments, played a central role in [Schmidt's] critical review and lowered job performance rating." Schmidt Aff., p. 6, ll. 21-23. Stith also added, prophetically, that, "When you do things your supervisors would be happier that you not do, then you have to be willing to pay the penalty, even if what you do is right." (read "protected").

By August 1999, management had clearly lost patience with Schmidt's refusal to stop speaking out. They had reinstated their prohibition, originally instituted in January 1998, against all private workplace conversations between staff members. This ban, clearly aimed mainly at Schmidt, amounted to an announcement that all communications among employees would be monitored; in Editor Benka's words, "everything to do with the job is [management's] domain, and there should be no privacy from [management]." Schmidt Aff., p. 8, ll. 18-20.

When this measure proved incapable of silencing Schmidt, management welcomed even a weak pretext for dismissing him. It seized on a single literary passage in Schmidt's book to fire him, supposedly for writing on "stolen" time. Unfortunately for the Institute, Schmidt did not "steal" any time. He merely did what many colleagues had done for many years; he used non-working down time and facilities to do freelance writing, a practice condoned by *Physics Today* and virtually every other periodical in the industry.

- D. The Institute's stated reason for firing Schmidt is false. The Institute would not have fired Schmidt in the absence of his protected, concerted activity as evidenced by the Institute's practice of allowing and even facilitating the industry's custom of allowing its employees to pursue their own personal writing on company time.
-

If the Board finds that the Institute's stated reason for firing Schmidt is false, the Board may draw the inference that the Institute discharged Schmidt for unlawful reasons. Active Transportation, 296 NLRB 431, 432 n.8 (1989). The Institute has stated, on at least two separate occasions, that it terminated Schmidt because he worked on his book during company time. At Schmidt's dismissal, Editor Steve Benka told Schmidt:

We see in your own introduction to your own book that you have stolen from the magazine. Therefore, you can no longer be employed by *Physics Today*. Your employment is terminated, now.

Schmidt Aff., p. 2, ll. 3-6. No other reason was ever given. Also, in the proceedings before the State of Maryland Department of Labor, the Institute contended that Schmidt "was discharged from the [Institute] on 6/2/00 because it was alleged that the claimant wrote a book on company time." ⁷ See Exhibit 14.

That this was the Institute's true reason for firing Schmidt, is belied by the Institute's long history of condoning, or even encouraging, outside writing, and it is inherently incredible, given the longstanding industry practice. For example, William Sweet who was employed at *Physics Today* from March 1984 until 1993, stated that "upon being hired, [he] asked the Editor in Chief, Hal Davis, whether [he] could pursue freelance projects while [Sweet] worked at *Physics Today*. Davis said that that would be fine as long as [he] did not attach *Physics Today* or the Institute to anything [Sweet] wrote." Sweet

⁷ Interestingly, the Department found that "insufficient information has been presented to show that the claimant's actions constituted misconduct in connection with the work." Exhibit 18.

Decl., ¶ 4. The fact that the Editor had no problem with a writer pursuing freelance work while at *Physics Today*, demonstrates that at the very least, the magazine was aware of and did not prohibit its employees from pursuing outside projects.

Moreover, the Institute provided free long distance and computer services to its employees. When Sweet was hired, he confirmed with the Human Resources Department, then headed by Theresa Braun, that he would have unlimited long-distance telephone privileges as a benefit of working at the Institute. Sweet Decl., ¶ 4. This privilege allowed Sweet to conduct long distance telephone interviews, free of charge, while at work.

Sweet and other employees at *Physics Today* did personal work during company time. Sweet openly worked on a number of freelance pieces, made long-distance calls, used the company's computer and the magazine's library for research, and discussed the articles with his co-workers. Sweet Decl., ¶¶ 6, 8. Another *Physics Today* editor, Chris Mohr, also spent a considerable amount of time pursuing freelance projects while working for the magazine. In his declaration, Mohr states:

While at *Physics Today*, I did all the writing on my computer at work and read all the source material while at work because it was based on the scientific magazines and publications received by *Physics Today*. I did this openly and spoke with co-workers about the article. No one ever said anything about my working on this piece.

Mohr Decl., ¶6. No one, other than Schmidt, was ever punished for such activity.

Physics Today's tolerance of outside work on company time reflects the norm in the industry. One does not have to dig deep to know that many writers and editors employed by newspapers and magazines do freelance writing. Bob Woodward and Carl Bernstein were writers for the *Washington Post* when they published All the President's Men. The staff writers of *The New Yorker* are famously prolific. The list could go on and

on - - virtually every well-known journalist, including William Manchester, Jack Germond, and William Buckley, has written outside works. No one would believe that none of this writing was done on time "stolen" from the employers.

As William Sweet, a journalist of 25 years explains:

In my experience, freelancing on an employer's time (and using an employer's resources) is and was ubiquitous in the newspaper and periodical industry. It generally is taken for granted that reasonably ambitious people will use company time, long distance telephone privileges, research facilities, and the company's computers to further their own writing careers.

Sweet Decl., ¶ 8. To expect anything less of one who enters the field of journalism is unrealistic.⁸

At bottom, for the Institute to suggest that it fired Schmidt for working on a book during company time, is at best a fast and loose interpretation of its own practices and the industry's unwritten rules and customs. At worst, it is a calculated misrepresentation, contradicted by voluminous evidence.

On the other hand, substantial evidence (and logic) supports the view that the Institute's true motive for discharging Schmidt was its escalating hostility to his protected activity. For nineteen years, Schmidt tirelessly advocated improvement in the working conditions of the staff, writers, and editors at *Physics Today*. For the last ten years, and

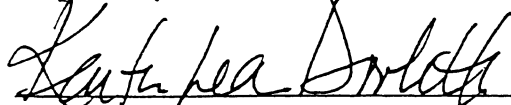
⁸ As additional proof of the frequency of this custom, charging party has attached several articles written by other *Physics Today* staff members which were published while employed at *Physics Today*, including a 200-page article edited by *Physics Today*'s own Managing Editor, Kenneth McNaughton. See Exhibit 17. It is simply not realistic to suggest that 1) all of these articles were entirely researched, written and edited, while not on company time, and 2) that the Institute was not aware of and did not encourage this practice. We will, if the Office desires, supplement additional declarations from Schmidt's former co-workers as to their experiences pursuing freelance projects while working for *Physics Today*.

especially during the last three years, management's responses to Schmidt's organizing efforts had grown increasingly strident. Finally, they carried out the ultimate threat.

CONCLUSION

For the foregoing reasons, the Office of Appeals should reverse Region 5 and issue a complaint alleging that the Institute unlawfully discharged Schmidt in violation of Sections 8(a)(1) and (5) of the Act.

Respectfully submitted,



Kirsten Lea Doolittle
DICKSTEIN, SHAPIRO MORIN &
OSHINSKY LLP
2101 L Street NW
Washington, DC 20036-1526

Counsel for the Charging Party
Jeff Schmidt

Attachments

cc: Wayne Gold, Regional Director
Region 5 – NLRB
103 South Gay Street, 8th Floor
Baltimore, MD 20008

Mr. Mark L. Sussman
Jackson, Lewis, Schnitzler & Krupman
1000 Woodbury Road, Suite 402
Woodbury, NY 11197

Mr. Marc H. Brodsky
American Institute of Physics
1 Physics Ellipse
College Park, MD 20740

S 001576



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

June 29, 2001

Re: American Institute of Physics
Case No. 5-CA-29366

Kirsten Lea Doolittle, Esq.
Dickstein, Shapiro Morin & Oghinsky, LLP
2101 L Street, N.W.
Washington, D.C. 20036-1526

Dear Ms. Doolittle:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered.

The appeal is denied. The evidence adduced during the Regional Office investigation established a *prima facie* case that Charging Party Jeff Schmidt was discharged for engaging in protected concerted activities. Thus, the evidence indicated that Jeff Schmidt engaged in extensive protected activity for over a decade, that the Employer had knowledge that Schmidt was engaged in such activity, and that the Employer bore animus towards Schmidt for engaging in such activity. However, it was further concluded that the evidence is also sufficient to establish that the Employer met its *Wright Line* [*Wright Line*, 251 NLRB 1083 (1980)] burden of establishing that it would have discharged Mr. Schmidt for his conduct relating to his book publishing in any event notwithstanding his role in protected concerted activities. The evidence in this regard indicates that Mr. Schmidt had a non-work related book published which contained an introduction with the following words: "This book is stolen. Written in part on stolen time, that is. I felt I had no choice but to do it that way...." The Employer asserts that when it learned of this statement it immediately discharged Mr. Schmidt for failing to spend his work time on company business.

While the appeal asserts that it is common industry practice for employees such as Mr. Schmidt to engage in writing activity during work hours for publishers other than their own employer, it was concluded that it is the practices of this particular Employer and not the publishing industry as a whole that is relevant to this matter on appeal. In this regard, the evidence submitted in support of the appeal concerning the Employer's alleged tolerance of other employees doing writing work for other publishers on company time was deemed distinguishable from the facts of the case on appeal. Thus, the articles in question were written some years ago and are not reasonably contemporaneous with Mr. Schmidt's discharge. Moreover, such articles, unlike Mr. Schmidt's book, appear to have some relationship to the field of physics.

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The appeal further asserts that Mr. Schmidt did not actually "steal" company time, but merely engaged in literary hyperbole in his book introduction. However, given the nature of the work involved in this matter, it was concluded that the Employer has some justification for taking Mr. Schmidt at his word rather than treating this as a mere literary device to catch the interest of a reader. Moreover, and most significantly, even if Mr. Schmidt did not actually work on his book project on company time, by asserting that he did, he served to undercut Employer efforts at enhancing employee productivity.

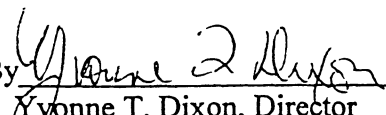
Thus, in view of all the above, it was concluded that the Employer met its burden under *Wright Line* of establishing that Mr. Schmidt would have been discharged for the above conduct even absent his participation in protected concerted activity.

While Employer threats of discipline and other retaliatory conduct in order to discourage employees from discussing working conditions with each other and informing the Employer of their collective concerns is conduct violative of the National Labor Relations Act, in view of all the circumstances of this matter, it was concluded that issuance of complaint regarding this particular allegation would not effectuate the purposes and policies of the Act.

Accordingly, further proceedings herein were unwarranted.

Sincerely,

Arthur F. Rosenfeld
General Counsel

By 
Yvonne T. Dixon, Director
Office of Appeals

cc: Director, Region 5
Mark L. Sussman, Esq., Jackson, Lewis, Schnitzer & Krupman, 1000 Woodbury Rd.,
Suite 402, Woodbury, NY 11197
Marc H. Brodsky, American Institute of Physics, 1 Physics Ellipse, College Park, MD
20740
Mr. Jeffrey Schmidt, 3003 Van Ness St., N.W., Apt. W406, Washington, DC 20008

tb

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August 7, 2001

Arthur F. Rosenfeld
General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

Re: American Institute of Physics, Case No. 5-CA-29366

Dear Mr. Rosenfeld:

We write to ask you to reconsider the Office of Appeals decision, dated June 29, 2001, refusing to issue a complaint in the above-referenced matter. Although we recognize that reconsideration is unusual, we think it appropriate here for two reasons. First, this case presents the type of circumstance where the protections of the Act are most needed. Mr. Schmidt is an employee who banded together with his fellow employees to present their grievances to management. The June 29, 2001 response concludes that management's response violated the Act.¹ Mr. Schmidt is not supported by a large labor organization; his only recourse is the Board. Therefore, if the Board does not protect his rights, legal violations will go unremedied.

Second, we respectfully suggest that the conclusion, that Mr. Schmidt's discharge did not violate the Act, rests on three fundamental errors. Two principal findings of the Office of Appeals are not supported by the facts. In addition, the American Institute of Physics's ("Institute") newly stated reason for Mr. Schmidt's discharge presents a completely different story from the Institute's initial rationale and one to which Mr. Schmidt should be given an opportunity to respond.

The dismissal letter begins from the premise that Mr. Schmidt established a "*prima facie* case that [he] was discharged for engaging in protected concerted activities." Nonetheless, it concludes that the employer "met its *Wright Line* burden of establishing that it would have discharged Mr. Schmidt for his conduct relating to his book publishing in any event notwithstanding his role in protected concerted activities." In support of this finding, Ms. Dixon explains that "the evidence presented in support of . . . the [Institute's] alleged tolerance of other employees doing writing work for other publishers on company

¹ Specifically, the Office of Appeals acknowledged that "the evidence indicated that Jeff Schmidt engaged in extensive protected activity for over a decade, that the [Institute] had knowledge that Schmidt was engaged in such activity, and that the [Institute] bore animus towards Schmidt for engaging in such activity." The Office of Appeals also recognized that the Institute had made "threats of discipline and other retaliatory conduct in order to discourage employees from discussing working conditions with each other and informing the [Institute] of their collective concerns. . . ."

time was deemed distinguishable from the facts of the case on appeal." *Id.* [emphasis added].

The "distinguishing" facts listed were: (1) the articles written by employees who were not fired were written some years ago and are not "reasonably contemporaneous with Mr. Schmidt's discharge"; and (2) those articles, "unlike Mr. Schmidt's book, appear to have some relationship to the field of physics."

The first distinction would support a *Wright Line* defense only if the Institute's policy of allowing its employees to pursue freelance projects on their free time had changed since the time in which Mr. Schmidt's coworkers openly pursued freelance work without repercussion. In fact, there was no such change in the Institute's policy; it never advised Mr. Schmidt or others that the academic workplace culture had changed and that outside writing on Institute time was now prohibited. Thus, this first distinction is a hollow one. The simple fact is that Mr. Schmidt was treated differently than others who wrote freelance works on company time, and the only credible reason for that differential treatment was his protected activity and management's hostility toward it.

The second distinction is simply wrong as a matter of fact. Mr. Schmidt's book centers on the field of physics, and even contains physics equations. It discusses the field of physics directly, unlike the articles by Mr. Schmidt's coworkers, which do so only indirectly, if at all. The Institute knew that the book focused on physics, not only because they had the book, but also because they had read a review of Mr. Schmidt's book by Spencer Weart, a division manager at the Institute, a physicist and respected historian of science. *Physics Today* magazine, the division of the Institute in which Mr. Schmidt worked, even included the book in its New Books list, which the magazine limits to books related to physics. Thus, Mr. Schmidt's book does have a relationship to the field of physics. Since neither of the grounds for denying Mr. Schmidt's appeal are valid, the decision should be reconsidered and Mr. Schmidt's appeal should be granted.

Finally, the Office of Appeals' reliance upon the Institute's newly proposed rationale for discharging Mr. Schmidt is inappropriate because Mr. Schmidt has never been presented with such a rationale, and consequently has not had the opportunity to respond. The Institute now claims, more than six months after Mr. Schmidt's discharge, that he was discharged for undercutting the Institute's "efforts at enhancing employee productivity." On the day of his discharge, however, the Institute told Mr. Schmidt that he was discharged because he had taken company time to work on a book.² The Office of Appeals' letter was the first document that Mr. Schmidt or his counsel received stating this new rationale. In these circumstances, it is clear that this rationale is an afterthought and should be viewed as pretextual.

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² The Institute gave that same explanation to Mr. Schmidt's coworkers, to the State of Maryland Department of Labor, and to the Chronicle of Higher Education.

Arthur F. Rosenfeld
August 7, 2001
Page 3

For these reasons, we respectfully request the General Counsel to reconsider Mr. Schmidt's appeal and order Region 5 to issue a complaint in the above-referenced matter.

Very truly yours,



Kirsten L. Doolittle

cc: Jeff Schmidt
3003 Van Ness St., N.W.
Washington, D.C. 20008

Yvonne T. Dixon, Esq.
Director, Office of Appeals
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Mr. Wayne Gold
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Mr. Marc H. Brodsky
American Institute of Physics
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College Park, MD 20740

S001581



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

August 14, 2001

Re: American Institute of Physics
Case No. 5-CA-29366

Kirsten Lea Doolittle, Esq.
Dickstein, Shapiro Morin & Oghinsky, LLP
2101 L Street, N.W.
Washington, D.C. 20036-1526

Dear Ms. Doolittle:

This is in response to your request for reconsideration postmarked August 7, 2001, of our June 29, 2001 decision sustaining the Regional Director's refusal to issue complaint in the above-captioned matter.

Your request must be rejected as untimely filed under Section 102.19(c) of the Board's Rules & Regulations which, in pertinent part, provides:

A motion for reconsideration of the decision must be filed within 14 days of service of the decision, except as hereinafter provided, and shall state with particularity the error requiring reconsideration. A motion for reconsideration based upon newly discovered evidence which has become available only since the decision on appeal shall be filed promptly on discovery of such evidence.

Inasmuch as your request for reconsideration did not meet the timeliness requirements of Section 102.19(c) and since nothing contained in your request constitutes "newly discovered evidence" within the meaning of that Section, your request for reconsideration is denied and this matter is considered closed.

Sincerely,

Arthur F. Rosenfeld
General Counsel

By Yvonne T. Dixon
Yvonne T. Dixon, Director
Office of Appeals

S 001582

**STATEMENT BY MARC H. BRODSKY, CEO AND EXECUTIVE DIRECTOR
OF THE AMERICAN INSTITUTE OF PHYSICS, PUBLISHER OF *PHYSICS
TODAY* MAGAZINE**

Dear _____,

I am writing in response to your recent inquiry regarding the circumstances surrounding Jeff Schmidt's termination. Since legal proceedings are pending in response to Mr. Schmidt's claims, I am providing only a brief statement of AIP's position. At the outset, please note that there has been no finding that the discharge of Mr. Schmidt violated any federally protected right. AIP is not involved in similar legal proceedings with any other incumbent or former employee. Also, I personally assure you that Mr. Schmidt's termination had nothing to do with the subject matter of his book.

Some who have written to me, made reference to APS. APS was not Mr. Schmidt's employer. AIP was.

Mr. Schmidt was discharged by AIP after he stated, in the introduction to his book, that it was written on "stolen time." To me, the reference to writing it on "stolen time" either meant or implied that he wrote the book on paid work time, when, in my opinion, he should have been devoting his energies to AIP. In brief, while being paid by AIP, Mr. Schmidt's comment communicates, in our view, that he was pursuing activities beyond what he was supposed to be doing on work time.

AIP supports the right of all employees to seek guidance from the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board or any other government agency to present questions regarding their employment or the termination thereof. AIP firmly believes that it has not engaged in any improper behavior. To date, no agency has found that AIP violated any law. In fact, below I quote from the findings of the NLRB, which dismissed Mr. Schmidt's unfair labor practice charge.

"The evidence in this regard indicates that Mr. Schmidt had a non-work related book published which contained an introduction with the following words: 'This book is stolen. Written in part on stolen time, that is. I felt that I had no choice but to do it that way....'"

The NLRB also rejected Mr. Schmidt's contention that he did not actually "steal" company time, but "merely engaged in literary hyperbole in his book introduction." The NLRB found that:

"given the nature of the work involved in this matter, it was concluded that the Employer has some justification for taking Mr. Schmidt at his word rather than treating this as a mere literary device to catch the interest of a reader. Moreover, and most significantly, even if Mr. Schmidt did not actually work on his book project on company time, by asserting that he did, he served to undercut Employer's efforts at enhancing employee productivity."

I hope that you find these brief remarks to be responsive to your questions and concerns. I hope you can appreciate our position. AIP is committed to the physics community and to its members. As an employer, we try to act appropriately. We are proud of our work atmosphere and the high morale of our employees. Thank you for your interest.

Marc Brodsky
August 31, 2001

S 001583

PROTESTS FORCE *PHYSICS TODAY* TO REVEAL ITS UNSOUND CASE

For many months after *Physics Today* fired Jeff Schmidt over his book *Disciplined Minds*, the magazine refused to respond to, or even acknowledge, the many letters of protest it was receiving. Then, in August 2001, as pressure mounted, Marc Brodsky, head of the American Institute of Physics, which publishes *Physics Today*, mentioned to some concerned physicists that "AIP may be forced to issue a public statement." A week later, the American Institute of Physics finally broke its silence.

Some people had given *Physics Today* the benefit of the doubt, figuring that there must be some unstated compelling reason why Jeff deserved to be fired. Brodsky's statement should provide an assurance that no such reason exists.

Moreover, a close look at Brodsky's statement points to the real reasons for Jeff's dismissal — namely, the critical nature of his book and his history of workplace activism. Far from justifying AIP's actions, Brodsky's statement verifies in many ways that the Institute's behavior in this case has been unacceptably out of line with the values and expectations of the community that it is supposed to serve and represent to the world:

1. Brodsky claims that he fired Jeff on the sole basis of the opening lines of *Disciplined Minds*, in which Jeff dramatizes the fact that he wrote the book in part at the office. But Brodsky knows that AIP employees engage in a wide variety of spare-time activity at work — chatting with coworkers, writing personal e-mail, making personal phone calls, surfing the Web and so on — and he has never punished anyone for that, or even discouraged it. Yet he says he fired Jeff for "pursuing activities beyond what he was supposed to be doing on work time," or, if not actually that, then at least "asserting that he did." Jeff received much praise for his work at *Physics Today*, from his supervisors, from the authors of the articles he edited and from members of the physics community. What made his workplace activities beyond his assignments grounds for firing, if not the critical nature of those activities?
2. Brodsky claims that Jeff's "termination had nothing to do with the subject matter" of his book. But then he approvingly quotes the National Labor Relations Board's explanation that it is an assessment of the book as a whole — a view of "the nature of the work involved in this matter" — that allows AIP to read the book's introduction in a way that justifies firing Jeff.
3. Brodsky's emphasis on his legal right to fire Jeff misses the point. "No agency has found that AIP violated any law," boasts Brodsky. But the hundreds of physicists and others who are speaking out in this case aren't saying that Jeff's dismissal was illegal, but rather that it violated the physics community's norms of tolerance for differing viewpoints, norms that are essential for the community's functioning and credibility.

Brodsky cites the National Labor Relations Board as the authority in this case. However, the NLRB's sole mission is to determine whether there has been a violation of the National Labor Relations Act of 1934, which made employee organizing a legally protected activity but did not protect book writing. The NLRB is not the appropriate body to determine what is right or wrong for the physics community, nor is any other government agency or court.

4. It's surprising that Brodsky would even mention the NLRB, because, as he himself must know, the agency's investigation found *Physics Today* to be a repressive and vengeful employer. Brodsky hides this fact by quoting very selectively from the NLRB's findings, focusing on employer rights. He does not quote the findings most relevant to the concerns of the physics community and others who value free expression. The findings were reported by NLRB General Counsel Arthur F. Rosenfeld — a former U.S. Chamber of Commerce lawyer appointed by George W. Bush and no friend of workplace organizers and activists. According to Rosenfeld...

"The evidence adduced during the Regional Office investigation established a prima facie case that Charging Party Jeff Schmidt was discharged for engaging in protected concerted activities. Thus, the evidence indicated that Jeff Schmidt engaged in extensive protected activity for over a decade, that the Employer had knowledge that Schmidt was engaged in such activity, and that the Employer bore animus towards Schmidt for engaging in such activity."

The "protected activity" here is the workplace organizing that Jeff had been doing.

Rosenfeld also took into account what he called *Physics Today*'s "threats of discipline and other retaliatory conduct in order to discourage employees from discussing working conditions with each other and informing the Employer of their collective concerns." And he noted that such behavior "is conduct violative of the National Labor Relations Act."

Nevertheless, a private corporation in the United States has the legal right to fire an employee for writing a book it doesn't like. So the NLRB concluded that while *Physics Today* may very well have engaged in numerous illegal repressive activities, firing Jeff over the book could not be counted as one of them. With Jeff's firing excluded from the case, the NLRB decided, as a matter of prosecutorial discretion, not to take action on the rest of the case. (The NLRB is not required, and does not have the resources, to prosecute all illegal activity.) Thus *Physics Today* escaped prosecution, but not, as Brodsky implies, because of its exemplary or even legal behavior. A high standard indeed for an organization representing the physics community!

Jeff's book is critical of management and critical of the political subordination of working scientists and other salaried professionals. By firing Jeff, Marc Brodsky, *Physics Today* and the American Institute of Physics, as well as the American Physical Society and the other

organizations that govern AIP, have made it clear that they are more interested in enforcing that subordination than in living up to the physics community's norms of free expression.

AIP's statement is weak and legalistic, and confirms the worst fears of Jeff's many supporters. We ask, more resolutely than ever, that *Physics Today* do the right thing and give Jeff his job back.

Talat Rahman
Fellow of the American Physical Society
University Distinguished Professor
Department of Physics
Kansas State University
Manhattan, Kansas

George F. Reiter
Professor of Physics
University of Houston
Houston, Texas

Michael A. Lee
Professor of Physics
Kent State University
Kent, Ohio

Denis G. Rancourt
Professor of Physics
University of Ottawa
Ottawa, Ontario, Canada

14 January 2002

Marc Brodsky, Executive Director
American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Dear Dr. Brodsky:

As individuals concerned with freedom of expression and freedom to organize, we were dismayed to learn of your recent dismissal of Jeff Schmidt, who had been an articles editor at *Physics Today* magazine for over 19 years. We urge you to reconsider your decision.

As we understand it, you fired Jeff after you saw his book, *Disciplined Minds*, and in particular after your discovery that Jeff used some of his spare time at the office for critical writing. You were evidently not deterred by the fact that during the years that Jeff was writing the book, *Physics Today* gave him two promotions and 19 salary increases based explicitly on the quantity and quality of his work for the magazine, which it scrutinized closely.

The fact that you dismissed Jeff after so many years of service not only without a hearing, but also without asking him a single question about the book or anything else, suggests that you were looking for an opportunity to get rid of him. Indeed, we understand that you were displeased with Jeff's workplace activism and had tried to silence him through a number of very repressive measures short of dismissal.

As you know, Jeff worked with other *Physics Today* staff members to improve working conditions, increase staff participation in decision-making, broaden the narrow range of viewpoints allowed in the magazine, make the salary structure fairer and diversify the staff. (At the time you fired Jeff, *Physics Today*'s large editorial staff was all white above the secretarial level.)

Because you are the head of the American Institute of Physics, your repressive actions harm the reputation of physicists. Worse, your actions discourage free expression and organizing, and thereby work against democracy and social progress. We ask you to take a step toward undoing the damage you have done. Give Jeff his job back.

Sincerely, (affiliations listed for identification only)

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S 001593

Physics World

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Going places

career options for physicists

S 001594

What's your philosophy? Anthropic principles Fresh ideas for physics degrees

CAREERS

Magazine firing backfires

Almost 600 American physicists have signed an open letter calling for the reinstatement of Jeff Schmidt to his position as a staff editor on *Physics Today*, the monthly magazine published by the American Institute of Physics (AIP). Schmidt was fired in May last year, soon after his book *Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System that Shapes Their Lives* had been published by Rowman & Littlefield.

The book is a highly critical look at professional life, including academic life, in modern America. In the introduction Schmidt describes how “employers’ emphasis on control and the bottom line is giving [professionals] only increased workloads, closer scrutiny by management and unprecedented anxiety about job security”. And so it proved for Schmidt, who has a PhD in physics from the University of California at Irvine.

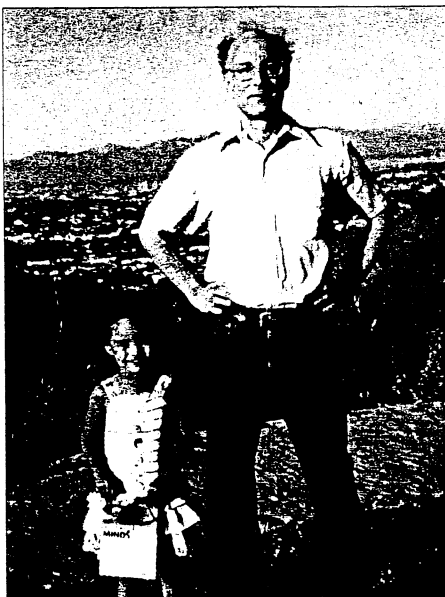
“A few days after [AIP authorities] saw the book,” he recalls, “a group of managers took me to the personnel office and told me they were firing me over the book. They escorted me out of the building like a criminal after 19 years on the job.”

What caused the dismissal? Marc Brodsky, executive director of the AIP, points to a passage in the introduction: “This book is stolen. Written in part on stolen time, that is...my job simply didn’t leave me enough energy for a major project of my own...so I began spending some office time on my own work.”

“We removed him for the statement he made that he was stealing from us: that is very close to an inflammatory statement, true or not,” Brodsky told *Physics World*. “We work on a system of tremendous trust in people. We don’t watch their hours. Stealing was in essence his own self-evaluation.”

Schmidt, who has not found a new job, later modified his comments, saying that he worked on the book during his paid half-hour break at *Physics Today*. He has also fought his dismissal, gaining some powerful allies along the way. The linguist Noam Chomsky organized an open letter, signed by 147 academics, calling on Brodsky to reconsider Schmidt’s firing, and a Washington law firm has agreed to represent Schmidt for free. Individual physicists have also written to the AIP.

Then, on 21 August this year, three physics professors – Talat Rahman of Kansas State University, George Reiter of the University of Houston, and Michael Lee of Kent State University – started to circulate a letter to Brodsky from the physics community. “While we do not necessarily agree with Jeff’s views...we believe that free debate within the physics community is healthy,” the letter states. “We urge you to



Standing firm – Jeff Schmidt and his daughter Joshua Rose with the offending book

reconsider your decision, and offer to reinstate Jeff as an editor at *Physics Today*. We ask that you publish this letter in *Physics Today*, to bring our concerns to the attention of the wider physics community.”

An accompanying note by former *Physics Today* staff members Chris Mohr and Jean Kumagai accuses the magazine’s management of using the book as a pretext to dismiss an individual they regarded as a difficult employee because, among other things, he consistently pressed for changes in workplace policies. Brodsky refuses to discuss those charges. “I am personally reluctant to make public comments about an ex-employee,” he says. He adds that *Physics Today* is unlikely to publish the letter “because the editor doesn’t think we should air our employee disputes in our publication”.

The letter was due to be delivered after *Physics World* went to press. “Hopefully it gives the AIP enough of an opportunity to review the case,” says Rahman. “It would be good to see justification for what has been done. We want due process.”

Several physicists have asked Robert Park, director of public information at the American Physical Society, why he has not written about the issue in his outspoken weekly column for the society’s Web site. “The fact of an organized campaign has made me a little leery,” says Park. Schmidt’s comment about stealing “could have been treated jocularly,” he says. “But if there had been earlier trouble with the employee, they would not have treated the statement that way.”

Peter Gwynne
Boston, MA

NUCLEAR PHYSICS

New era for gamma rays

An accelerator in the US is to be upgraded to produce gamma rays that are one million times more powerful than any other source in the world. The High Intensity Gamma-ray Source (HIGS) at Duke University in North Carolina produces gamma rays by colliding electrons with laser photons. Thanks to a grant of \$3.2m (about £2.2m) from the Department of Energy, the source will also produce gamma rays over a much wider range of energies than before.

The source consists of a storage ring, 54 m in diameter, into which two equally spaced electron bunches are injected. A free-electron laser system stationed half way round the ring converts one bunch of electrons into an intense ultraviolet laser beam. This pulse of light reflects from a mirror, returns the way it came, and collides head-on with the other electron bunch. Through the process of “inverse Compton scattering”, the electrons boost the energy of the ultraviolet photons by a factor of some 16 million. The result: a beam of high-intensity gamma rays of well defined energy.

“It is this unique capability that is the most popular feature for nuclear physicists,” says Vladimir Litvinenko, the Duke University physicist who designed the source’s free-electron laser. “The ability to generate beams of mono-energetic gamma rays with tunable energy is critical for most of the nuclear experiments we carry out.”

Almost 100 scientists from over 30 institutions currently use the source. For example, Norbert Pietralla, a nuclear physicist from Yale University, uses it to study nuclear resonance fluorescence (NRF), which provides valuable information about nuclei – such as their parity quantum number – that is almost impossible to obtain by other means. “HIGS opens up a whole new chapter in NRF research,” says Pietralla.

Meanwhile, astronomers from the Max Planck Institute for Gamma-ray Astronomy in Mainz, Germany, want to use the HIGS facility to calibrate their Medium Energy Gamma-ray Astronomy (MEGA) telescope.

“The upgrade will allow us to perform experiments to test fundamental symmetries and provide detailed information on the mass difference between up and down quarks,” says Henry Weller, a nuclear physicist at Duke. “There is a long list of experiments lined up for HIGS,” says Litvinenko. “I can even see potential for medical and industrial applications.”

John Moore

STATE REJECTS AIP'S CHARGE OF EMPLOYEE MISCONDUCT

The State of Maryland Department of Labor conducted a surprisingly detailed investigation into the circumstances under which the American Institute of Physics fired me. The investigation found that AIP fired me without real evidence that my book writing interfered with my work or the work of others. The state therefore rejected AIP's claim that I engaged in misconduct on the job by writing *Disciplined Minds*.

The investigation was prompted by my request for unemployment benefits. Eligibility for such benefits is limited to people who lose their jobs "through no fault of their own." So if you quit your job or are fired for misconduct, you may not be entitled to benefits.

An unemployment office examiner explained to me that "some employers send us information and indicate that they do not wish to dispute the claim." The American Institute of Physics didn't do that. Instead, AIP sought a ruling in its favor, which would not only punish me further and save AIP money, but also give AIP political support in the form of third-party validation of its action against me. Thus, AIP charged me with misconduct, telling the state that "The employee admittedly used company time to work on a personal project over an extended period of time." The state then had to investigate, to determine independently whether or not I had engaged in misconduct.

The centerpiece of the investigation was a hearing that took the better part of an hour, during which I offered a very different theory of why AIP fired me. I said that AIP fired me for political reasons — specifically, because management didn't like the critical content of the book and was looking for an excuse to get rid of a workplace activist.

Department of Labor examiner Tasha Owens conducted the hearing by telephone. I waived my right to representation, figuring that I could present the facts as well as anyone. Owens interviewed me first, for 28 minutes. To test the company's claim, she asked me questions about how much time at the office I spent writing the book. (A portion of break time.) To test my claim, she asked me questions about whether or not the company ever asked me how much time at the office I spent writing the book. (No, they didn't seem to care about that.)

At the end of the interview, Owens scheduled me for a follow-up interview to give me the opportunity to rebut points that AIP would make during its part of the hearing. However, Owens didn't call at the appointed time, and so I called her and asked why. She said, "There was nothing to rebut." Interestingly, AIP and I agreed about what I did, and disagreed only about whether or not my actions constituted misconduct. AIP, she said, "gave me the same information that you gave me."

Having gathered the facts, Owens had to make a decision. According to Susan R. Bass, an administrator in the office of the executive director of Maryland's unemployment insurance program, Owens had three levels of employee misconduct to choose from:

- o Simple misconduct — Here the fired employee gets “delayed benefits,” which begin after a five to ten week waiting period.
- o Gross misconduct — No benefits.
- o Aggravated misconduct — No benefits, and reduced eligibility for benefits following subsequent employment.

Owens ruled that my work on the book didn’t even rise to the level of simple misconduct, and so she awarded me full benefits, which the American Institute of Physics had to pay for through increased unemployment insurance premiums.

AIP was given the opportunity to appeal the state’s finding, but did not do so. If AIP sincerely believed its own story that it fired me for real misconduct on the job, and not just for political misconduct, then I think it would have appealed. AIP would have appealed not only to save thousands of dollars, but also to dispel the implication that its motives for firing me weren’t squeaky clean.

Officially, the ruling means that AIP fired me for a reason other than “misconduct connected with the work.” Who will see that reason as anything other than political misconduct?

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF UNEMPLOYMENT INSURANCE

NOTICE OF BENEFIT DETERMINATION

SSN: [REDACTED]
DATE MAILED: 06/26/2000
BENEFIT YEAR BEGINS: 06/04/2000

COLLEGE PARK CLAIM CENTER
P.O. BOX 1901
COLLEGE PARK MD 20740

MAIL REQUEST FOR APPEAL TO
LOCAL OFFICE ADDRESS ABOVE

JEFF SCHMIDT
3003 VAN NESS ST NW APT W406
WASHINGTON DC 20008 4830

ISSUE SIMPLE MISCONDUCT
SECTION OF LAW 8-1003
DATE OF DETERMINATION 06/26/2000
SPECIALIST ID EWCP1A

AMERICAN INSTITUTE OF PHYSICS
INCORPORATED
1 PHYSICS ELLIPSE
COLLEGE PARK MD 20740 3842

THE LAST DAY TO FILE AN APPEAL IS: 07/11/2000
(IF THIS DECISION IS CHANGED ON APPEAL, THE CLAIMANT
WILL BE REQUIRED TO REPAY ANY RESULTING OVERPAYMENT.)
DETERMINATION:

THE CLAIMANT WAS DISCHARGE FROM AMERICAN INSTITUTE OF PHYSICS ON 6/2/00
BECAUSE IT WAS ALLEGED THAT THE CLAIMANT WROTE A BOOK ON COMPANY TIME.

INSUFFICIENT INFORMATION HAS BEEN PRESENTED TO SHOW THAT THE CLAIMANT'S
ACTIONS CONSTITUTED MISCONDUCT IN CONNECTION WITH THE WORK. AS A RESULT, IT IS
DETERMINED THAT THE CIRCUMSTANCES SURROUNDING THE SEPARATION DO NOT WARRANT
A DISQUALIFICATION UNDER SECTION 8-1002 OR 8-1003 OF THE MARYLAND UNEMPLOYMENT
INSURANCE LAW.

BENEFITS ARE ALLOWED, IF OTHERWISE ELIGIBLE.

S 001598

APPEAL RIGHTS:

CLAIMANT AND EMPLOYER: Section 8-509 of the Maryland Unemployment Insurance Law provides the right to appeal this determination. The appeal must be in writing and may be submitted in person or mailed to the Local Office within (15) days of the determination. If mailed, the appeal must be postmarked within (15) days of the date of this determination. A claimant who appeals a determination and remains unemployed must continue to file timely claims for each week. NO LATE CLAIMS WILL BE ACCEPTED. If an appeal decision results in reversal or modification of this determination, the claimant may be paid benefits previously denied or may be overpaid benefits previously paid.

SEE BACK OF FORM FOR PROVISIONS OF THE LAW

21 June 2000

Marc Brodsky, Executive Director
American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Dear Dr. Brodsky:

We were dismayed to learn of the recent dismissal of Jeff Schmidt, who had been an articles editor at *Physics Today* magazine for over 19 years. As former employees of the magazine, we urge you to reconsider your decision.

As we understand it, Jeff was fired after the publication of his book, *Disciplined Minds*, and in particular after AIP managers heard about the book's opening lines: "This book is stolen. Written in part on stolen time, that is." According to Jeff's supervisor, Stephen Benka, this intentionally provocative statement proved that Jeff was not "fully engaged" at the magazine.

Under different circumstances, we might find some humor in the fact that Jeff's declaration, obviously made for dramatic effect, would create such a stir. But there's much more at stake here: you have chosen to deprive Jeff of his livelihood. We take deep exception to that.

Whether Jeff — or, for that matter, anybody else at *Physics Today* — was "fully engaged" is really immaterial. What counts, or what should count, is that Jeff did his work for the magazine, and AIP invariably gave him above-average or satisfactory ratings in his performance reviews. Your recent discovery that Jeff used his spare time for critical writing, rather than surfing the Net, exchanging personal e-mail, or other common diversions, shouldn't be cause for punitive action. It's also worth noting that the use of one's spare time at the office to work on a book is a time-honored tradition among journalists. Indeed, many employers encourage it, recognizing that it boosts the professional standing of their employees and enhances the reputation of the organization.

We have all worked with Jeff, and we know him to be a talented and conscientious editor. While at *Physics Today*, we benefited from his camaraderie, support, and good ideas. Authors who worked with Jeff, as well as *PT* staff members themselves, will tell you that Jeff performed his duties with admirable skill and efficiency. He is a clear, careful journalist, and he has a deep interest in physics and in the social issues surrounding it. What is more, he worked hard to improve the work environment at the magazine. *Physics Today* has been a better place for his presence.

It is our strong belief that you erred in firing Jeff. We therefore urge you to give him his job back.

Respectfully,

Paul Elliott (Alexandria, Virginia)
Daniel Gladstone (Southold, New York)
Alexander Hellemans (Naples, Italy)
Jesse Hochstadt (Providence, Rhode Island)
Marlowe Hood (Paris, France)
Jay Iorio (Bedminster, New Jersey)
Pat Janowski (Portland, Oregon)
Jean Kumagai (Brooklyn, New York)
Margaret Marynowski (Brookline, Massachusetts)
Chris Mohr (San Francisco, California)
Madhusree Mukerjee (Queens, New York)
Corey Powell (Brooklyn, New York)
Matthew Siegel (Brooklyn, New York)
Sharon Singletary-Smith (Bellport, New York)
William Sweet (Brooklyn, New York)
(one name withheld by request)